TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909

No. [redacted]51.

JENNIE L. GRAVES, IDA J. GRAVES, AND MINNIE C. GRAVES, PETITIONERS,

vs.

ANNA P. ASHBURN, EXECUTRIX OF W. W. ASHBURN, DECEASED, AND H. T. CRAWFORD.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITION FOR CERTIORARI FILED JANUARY 13, 1909.
CERTIORARI AND RETURN FILED MARCH 7, 1909.

(20,967.)

(20,967.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 243.

JENNIE L. GRAVES, IDA J. GRAVES, AND MINNIE C. GRAVES, PETITIONERS,

vs.

ANNA P. ASHBURN, EXECUTRIX OF W. W. ASHBURN, DECEASED, AND H. T. CRAWFORD.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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a *Transcript of Record.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 1506.

W. W. ASHBURN, Appellant,
versus
JENNIE L. GRAVES ET AL., Appellees.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

[Original Record Filed September 8, 1905.]

U. S. Circuit Court of Appeals. Filed Jul- 3, 1906.
CHARLES H. LEDNUM, *Clerk.*

1 United States Circuit Court of Appeals for the Fifth Circuit.

W. W. ASHBURN, Appellant,
versus
JENNIE L. GRAVES ET AL., Appellees.

JENNIE L. GRAVES ET AL., Appellants,
versus
H. T. CRAWFORD ET AL., Appellees.

Cross Appeal.

To Charles H. Lednum, Esq., Clerk of Said Court:

In having the transcript of the above stated case printed, you are authorized and requested to omit the testimony of A. H. Hansell and James Holmes, if the same appears in the record sent up by the Clerk of the Circuit Court of the United States for the Southern District of Georgia.

W. C. M'CALL,
Sol. for John McMullin.
ROBT. L. SHIPP,
For W. W. Ashburn.
SAUL B. ADAMS,
Sols. for H. T. Crawford.
MARION ERWIN,
Sol. for J. L. Graves, Ida J. Graves and Minnie C. Graves.

[Indorsed:] No. 1506 W. W. Ashburn *vs.* Jennie L. Graves *et al.* Stipulation as to printing. U. S. Circuit Court of Appeals. Filed March 14, 1906. Charles H. Lednum, Clerk.

2 *Original Bill.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

JENNIE L. GRAVES, IDA J. GRAVES and MINNIE C. GRAVES,
versus
H. T. CRAWFORD ET AL.

In Equity, Bill, Etc.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia:

Jennie L. Graves, Ida J. Graves and Minnie C. Graves, of the County of Cortland, State of New York, and citizens and residents of the State of New York, bring this their bill of complaint against H. T. Crawford, William McMullin, John McMullin, citizens of the State of Georgia, resident in the County of Colquitt, in said division and district, and against W. W. Ashburn, a citizen of the State of Georgia, resident in the County of Fulton, State of Georgia, and against John W. Hightower, a citizen of the State of Georgia, resident in the County of Dodge, in said division and district, and thereupon your orators complain and say:

I.

That heretofore, to-wit, some fifty years ago, in the early part of the decade 1840 to 1850, one Eli Graves, the uncle of Cyrus S. Graves, the husband of your orator, Jennie L. Graves, and father of your orators, Ida J. Graves and Minnie C. Graves, moved from his former home in Vermont and settled in Thomas County, Georgia. Said Eli Graves was a man of some means, and of considerable culture and also a minister of the Gospel in the Presbyterian Church. Joel S. Graves, a brother of Eli Graves, had about the same time settled in Jefferson County, State of Florida, where he, also was a Presbyterian minister. While the said Eli Graves was so residing in Thomas County, Georgia, he acquired title by direct grants
3 from the State of Georgia to him a large number of lots (about forty lots) of land lying in the 8th District of originally Irwin County, Georgia, and lying in that part of originally Irwin County, afterwards a part of Thomas County and now a part of Colquitt County, Georgia. Among said lots of land so granted to the said Eli Graves were lots numbers 353, 354, 383 and 384, in the 8th District of said county, said four lots last mentioned forming a square tract of land containing 1960 acres, more or less, a diagram of which is hereto attached as Exhibit "C."

II.

Thereafter, to-wit, on the 22nd day of March, 1848, the said Eli Graves, by warranty deed duly executed and delivered, sold and conveyed said forty lots of land to his said brother, Joel S. Graves,

which deed was duly recorded in the clerk's office of the Superior Court of Thomas County, Georgia, on the 15th day of March, 1849, in Book E, page 371, and also was duly recorded in the clerk's office of the Superior Court of Colquitt County, Georgia, on August 20th, 1886, in Book B (D. R.) pages 606 and 607. Thereafter the said Joel Graves settled in Colquitt County, Georgia, on some of said lands and built the first brick church ever erected in what was then Thomas County, as your orators are informed and so charge, which brick church is now standing and in use as a church and known as the Greenfield Church in Colquitt County. At that time that section of the State was almost a wilderness and the settlement there established was in the midst of pine forests that extended for miles in every direction. The said Joel Graves, as your orators are informed, established there a large school, also a cooperage factory, and was one of the pioneers in the development of that section of the State of Georgia.

III.

Thereafter, to-wit, on the 8th day of June, 1855, the said Joel S. Graves, then of the County of Thomas aforesaid, by deed duly executed and delivered, sold and conveyed to Cyrus S. Graves, husband of your orator, Jennie L. Graves, and father of Ida J. Graves and Minnie C. Graves, aforesaid, six of the aforesaid forty lots of land, to-wit, lots 345 and 437, and the four other lots lying in juxtaposition to each other and forming one tract of land in the form of a square, to-wit, lots 353, 354, 383 and 384, all of said lots being at the time covered with a heavy growth of pine timber in
4 its virgin state, which said deed was duly recorded in the clerk's office of Thomas County, Georgia, on June 11, 1855, in Book of Deeds "F," page 677, and also duly recorded on the records of the clerk's office of the Superior Court of Colquitt County, Georgia, on April 2nd, 1889, in Book "C," (D. R.) pages 408 and 409.

IV.

That thereafter the said Joel S. Graves died, all the remainder of said lots of land formerly belonging to him having been conveyed away by him during his life or passing out to other people after his death.

V.

And from that time to this the title to said six lots of land so conveyed to the said Cyrus S. Graves, as aforesaid, has continued in the said Cyrus S. Graves during his life and thereafter your orators, his wife and daughters, continuously, and the said lots of land have been generally known as the lands of the Graves heirs among the people of the surrounding country, and the title to said lots have been particularly well known to all the settlers in that neighborhood, by reason of the prominent part taken in the early settlement of that section by your orators' kinsman and predecessor in title as aforesaid.

VI.

Your orators further aver and charge that the said Cyrus S. Graves died intestate at Calhoun, Georgia, in 1863, being then in the Army of the Confederacy, leaving his widow, your orator, Jennie L. Graves, and his two daughters, Ida J. Graves and Minnie C. Graves, as his sole heirs.

VII.

After the termination of the Civil War your orators went to live with the mother of your orator, Jennie L. Graves, and grandmother of the said Ida J. Graves and Minnie C. Graves, in Cortland County, New York, where they have since resided and made their home with the exception of a portion of the time when they lived in Saratoga, New York.

5 VIII.

Your orators further avef and charge that the said lots of land so inherited by them from the said Cyrus S. Graves as aforesaid was, and is, particularly valuable on account of the heavy growth of pine timber thereon, which during the past few years has come specially in demand by reason of the development of the turpentine and lumber industries in that section of the State, and particularly by reason of the fact of certain railroads constructed principally for lumber business which have been of recent years extended into that section, and some of which are now projected, and one of said railroads having been constructed and being now operated through the said tract of land comprising the four lots of land numbers 353, 354, 383 and 384, aforesaid. And that the said tract of land comprised of said four lots last aforesaid is, including the timber and turpentine thereon, of the value of $10,000, or other large sum, much exceeding the sum of $2,000, exclusive of interest and costs.

IX.

Your orators further aver and charge that in the year 1889 your orators visited Thomasville, Georgia, for the purpose of examining the condition of their said lands and to arrange for the proper protection of the same from tresspasses. Your orators for that purpose consulted with A. T. McIntyre, Sr., of the firm of McIntyre & McIntyre, attorneys at law, at Thomasville, Ga. The said A. T. McIntyre, Sr., stated to your orators that it would be well to have some residents of Colquitt County to look after the said lands, and to keep off trespassers and to notify your orators, and the said A. T. McIntyre, for your orators, of any trespasses which might be committed upon said lands at any time; and the said McIntyre stated that the aforesaid William McMullin, who resided in the neighborhood of said lots in Colquitt County, was looking after a large number of lots in that county belonging to the said McIntyre, and that he would speak to McMullin in reference to looking after your orators' said lots and recommended him strongly to your orators and advised that your orators see the said McMullin in reference thereto. At that time the said McIntyre discussed with your

orators that one of your orators' said lots, No. 345, had been trespassed upon by one Philip Norman.

6 X.

Your orators thereupon by private conveyance drove across the country from Thomasville to Moultrie, in Colquitt County, and inspected the several lots of land belonging to your orators, and particularly the tract of land composed of the four lots numbers 353, 354, 383 and 384, all of which lots were then covered with a heavy growth of yellow pine timber, which was untouched either for turpentine or timber purposes, and your orators also inspected the separate lot number 345, upon which they found the said Norman then trespassing. Your orators at that time went to see the said William McMullin and in conversation with him it was developed that your oratrix, Jennie L. Graves, had rendered kind services to the brother of the said William McMullin while he was in distress from sickness during the war. The said William McMullin expressed himself as anxious to requite this service, and stated that he would look after said lots of land belonging to your orators, for your orators, for the purpose of preventing trespasses or interference. Your orators offered to pay the said William McMullin for his services in that behalf, but he refused to accept payment, and stated that he would make no charge. Your oratrix, Jennie L. Graves, pressed upon him the acceptance of a small sum of money, to be given to his wife, which he finally accepted.

XII.

Your orators returned to Thomasville, Georgia, and discussed the situation of said lands with the said A. T. McIntyre, Sr., and particularly in reference to the contemplated employment of the said firm of McIntyre & McIntyre to bring suit against the said Norman for his trespasses on lot number 345. And your orator, Jennie L. Graves, at that time by deed, regularly executed and delivered, conveyed all her interest in said lots 345, 354, 383 and 384 and 437 to Ida J. Graves and Minnie C. Graves, which deed was duly recorded on April 2, 1899, in the clerk's office of the Superior Court of Colquitt County, Georgia. And your orators left with the said A. T. McIntyre, Sr., or sent to him soon after, such of their title deeds as they then had, and the said A. T. McIntyre, Sr., promised to look after their matters, and pay the taxes on said lots for your orators when furnished with the necessary funds therefor. Your orators thereafter returned to their home in Cortland County, New York.

7 XIII.

Your orators thereafter arranged to have said original plots and grants from the State to your orators' aforesaid lots of land, and the original deed from Eli Graves to Joel Graves, which were then in the possession of Spencer Graves, the son of Joel Graves, turned over to the said A. T. McIntyre, Sr., and after some delay said A. T. McIntyre, Sr., obtained the same through the said William

McMullin, who got them from the said Spencer Graves, and the said A. T. McIntyre prosecuted the suit against the said Norman which some time thereafter was settled, and out of the proceeds of settlement the said McIntyre & McIntyre were paid for their legal services.

XIV.

For a number of years thereafter your orators were in correspondence with the said A. T. McIntyre, Sr., and the said William McMullin in reference to said lands, and your orators continued to pay the taxes upon said lands and have paid all taxes upon the same accrued to date.

XV.

Your orators further aver and charge that about the latter part of the year 1893 the said William McMullin notified your orators by letter that one D. A. Autrey had commenced to trespass upon lot No. 384 aforesaid, and thereafter the said A. T. McIntyre, Sr., filed a suit against the said Autrey in the Superior Court of Colquitt County, Georgia, to stop said trespassing, which suit was pending some five years in said Court without having been brought to trial. That thereafter, to-wit, in April, 1899, the said A. T. McIntyre, Sr., having withdrawn from said suit as attorney, your orators dismissed said suit in said Court for the purpose of bringing the same in the United States Circuit Court for said division and district; whereupon said Autrey agreed to pay your orators for the value of the timber on said lot No. 384, and executed a quit claim deed to your orators to the said lot, whereby your orators' title in and to that part of said tract of land was fully confirmed, vindicated and established.

XVI.

Your orators further aver and charge that while the said A. T. McIntyre so represented your orators as attorney, as aforesaid,
8 and was in possession of your orators' title deeds, as aforesaid, to-wit, on November 5th, 1890, the said McIntyre, as a member of the firm of McIntyre and Watson, undertook to convey by deed, and in behalf of said firm of McIntyre and Watson, to said W. W. Ashburn, the title to the north half of lot No. 353, which deed is recorded on the records of the clerk of the Superior Court of Colquitt County, Ga., February 1, 1890. The said W. W. Ashburn accepted said conveyance with full notice that the title to said lot of land was in your orators, and that the said McIntyre & Watson had no title thereto. And your orators further aver and charge that the said deed constitutes a cloud upon the title of your orators' said lands. And the said north half of said lot being still covered with a heavy growth of marketable pine timber, and being chiefly valuable by reason of the opportunity to sell said timber, the said cloud upon your orators' title prevents your orators from selling the said timber, to the great wrong and injury and loss of your orators; and your orators further aver and charge on information that the said W. W. Ashburn has leased the timber privileges on the said north half of said lot No. 353 to the said John H. Hightower, who

is about to proceed, under the said W. W. Ashburn, to cut and convey away said timber, to the great wrong and injury of your orators, and through other persons acting under him has boxed the trees and taken the turpentine from other portions of said lot No. 353.

XVII.

Your orators further aver and charge on information that through some fraud, error or mistake, lot of land No. 383 in the 8th District of Colquitt County, was put up for sale at a receiver's sale in said Colquitt County in July, 1894, and at said sale A. T. McIntyre, Jr., a member of the law firm of McIntyre & McIntyre, who at that time had your orator's title deeds in their possession as aforesaid, gave public notice at the sale that the said lot of land belonged to your orators, and thereupon bid in said lot of land for the sum of $5.00 at said sale, stating at the time that it was bid in for your orators, but your orators aver and charge that said A. T. McIntyre, Jr., took said conveyance of said lot from the receiver aforesaid to himself and in his own name, and your orators aver and charge that the said A. T. McIntyre, Jr., never informed your orators that he had so taken a pretended outside title to said lot to himself, while his said
9 firm was so representing your orators as attorneys, in and about said lands as aforesaid; and your orators aver and charge that said lot of land was at the time of said alleged purchase by said A. T. McIntyre, Jr., worth the sum of about $2500.00 or other large sum. Your orators further aver and charge that thereafter the said A. T. McIntyre, Jr., departed this life and one Samuel L. Hayes, of Thomasville, Georgia, was appointed administrator of the estate of the said A. T. McIntyre, Jr.

XVIII.

Your orators further aver and charge on information that thereafter, to-wit, about October, 1898, an agreement was entered into between the said A. T. McIntyre, Sr., and the said William McMullin, the said John McMullin and the said H. T. Crawford, which agreement was kept secret from your orators, whereby a conveyance of said lot was to be made from Samuel L. Hayes, administrator, as aforesaid, at private sale, to John McMullin, the son of said William McMullin, who had with his father been looking after said lands for your orators as aforesaid, for the sum of $500.00, while said lot of land was worth many times that amount, and that the said John McMullin would immediately convey the same lot to the said H. T. Crawford for the sum of $1500.00, which was an amount largely below the value of said lot at the time; and your orators charge on information and belief that the said Samuel L. Hayes was not a party to said agreement, but was informed that the said William McMullin had a half interest with the estate of said A. T. McIntyre, Jr., in said lot of land, and that the $500 coming to him as administrator represented only a half interest in said lot; and your orators charge on information and belief that the said Hayes, administrator, acted himself under the belief that the transaction was straight upon the

advice received by him from said A. T. McIntyre, Sr., acting as his attorney, and as the father of the said A. T. McIntyre, Jr.; and your orators aver and charge that in pursuance of said secret understanding the said A. T. McIntyre, Sr., obtained an order from the Superior Court of Thomas County on October 19, 1898, authorizing said administrator to sell said lot Number 383 in the 8th District of Colquitt County, at private sale, and that thereafter, to-wit, on November 9, 1898, the said A. T. McIntyre, Sr., drafted in his own handwriting a deed from the said Hayes, administrator, as aforesaid, to said John McMullin for the $500 consideration which went
10 to his son's estate, and also drafted the deed in his own handwriting from the said John McMullin to the said H. T. Crawford for $1500.00, all of which papers were duly executed and delivered; and your orators further aver and charge that the said H. T. Crawford at the time he took said deed from John McMullin as aforesaid had full and legal notice that the title to said lot of land No. 383 was then and there in your orators, and that the said John McMullin had no right, title or interest in the same.

XIX.

And your orators further aver and charge that thereafter, to-wit, about December, 1898, the said H. T. Crawford commenced to box the trees on said lot of land No. 383 for turpentine purposes, and is now, as your orators are informed, proceeding to dip and carry away the turpentine therefrom, to the great wrong and injury of your orators. Your orators aver and charge that the said deed dated November 9, 1898, purporting to convey the said lot of land number 383 from the said John McMullin to the said H. T. Crawford was recorded on the records of the Clerk of the Superior Court of Colquitt County, Georgia, November 14, 1898, and that the same constitutes a cloud upon your orators' title to said lot and prevents your orators from marketing turpentine and timber thereon.

XX.

Your orators further aver and charge on information that the said H. T. Crawford with full notice of the title of your orators to said tract of land composed of said lots numbers 353, 354, 383 and 384, likewise entered upon the south halfs of lots number 353 and 354, and cut the timber on parts of the same, and used the same for turpentine purposes, and is continuing his trespasses thereupon, and unless restrained by the orders and decrees of this Court will destroy the entire timber and turpentine values of said lots.

XXI.

Your orators further aver and charge on information that said trespassers, knowing the fact that your orators were defenseless females residing in a distant State, have taken advantage of your orators' absence and have advanced from one step to another
11 in the wrongs and injuries upon your orators in and about said lands, and that they have combined and confederated

in said wrongs with the attorneys and agents aforesaid left by your orators in that locality to look after your orators' interests there, and that unless the trespassers aforesaid are restrained and enjoined by the orders and decrees of this Court your orators will suffer irreparable loss and injury.

XXII.

Your orators further aver and charge that while being in regular correspondence with your orators and without ever having presented a bill to your orators or notifying your orators that he had any charge whatever to make for or on account of his services in and about the said lands, that on the 6th day of June, 1898, the said William McMullin sued out a writ of attachment before the County Court of Colquitt County, Georgia, against your orators for an alleged indebtedness of $500.00 claimed by him to be due by your orators to him for services rendered your orators in and about said lands, and had said attachment levied upon your orators lot of land No. 354 aforesaid; said attachment having been sued out on the ground that your orators were non-residents, and that thereafter on the 14th day of November, 1898, without any personal service or notice upon your orators, had judgment entered up in said County Court against your orators for the sum of $500.00, besides costs, and directing the sale of said lot No. 354 to satisfy said judgment. A copy of said attachment proceedings being hereto attached as Exhibit "B." And your orators aver and charge that on the same day judgment was entered up, to-wit, November 14, 1898, the deed to lot number 383 aforesaid from said Hayes, administrator, to John McMullin was recorded in the clerk's office of the Superior Court of Colquitt County, in the same building with said County Court, and that said alleged services for which said attachment was sued out was, in part stated to be for representing your orators in and about said lot 383 as appears in the face of the account annexed to said attachment proceedings, the looking after which lot was then and there entrusted to the said William McMullin, and his son, acting under him, by your orators, and which said lot the said John McMullin did on November 9th, 1898, attempt to convey to the said H. T. Crawford in fraud of the rights of your orators as aforesaid.

12 XXIII.

Your orators further aver and charge that the levy of said attachment in manner and form aforesaid by the said William McMullin was a great wrong, injury and fraud upon your orators and a breach of the trust reposed in him and which he had assumed towards your orators in the premises. That the entry of judgment upon the said attachment without notice to your orators of the pendency of said suit, by reason of the confidential and trust relationship existing between your orators and the said William McMullin was a great wrong, injury and fraud committed upon your orators.

XXIV.

Your orators further aver and charge that the services for which charges were made by the said William McMullin as aforesaid were not rendered under any contract with your orators, and that instead of rendering the services charged for in said contract the said William McMullin was at and during a large part of the time for which said services are charged, actively engaged in defrauding your orators out of the lands and the turpentine and timber thereon as hereinbefore set forth in this bill, as your orators are informed, believe and so charge. Your orators aver and charge that unless said judgment is opened by this Court as a Court of Equity, and set aside for the manifest fraud committed upon your orators therein as aforesaid, the said William McMullin will proceed with said sale under said attachment of said lot number 353 constituting a part of said tract of land belonging to your orators as aforesaid and your orators will be deprived of their said property.

XXV.

Your orators came down to Thomasville, Georgia, on December 31, 1898, after an absence of about nine years, and proceeded to investigate the condition of their said properties in Colquitt County, and upon a visit to Colquitt County, upon investigations made, your orators learned and discovered the aforesaid wrongs and injuries inflicted upon your orators as complained of in this bill, which resulted in the withdrawal of the said A. T. McIntyre, Sr., as counsel for your orators in the aforesaid litigation commenced by him for your orators. And your orators were compelled to employ new counsel and make this your orators' appeal for the protection
13 of your orators' rights in this Court of Equity. Your orators set out as Exhibit "A" a complete abstract of their title to the aforesaid tract of land. Your orators have not attached copies of the several grants from the State and deeds constituting the chain of title because of their voluminousness, but exhibit the same to the Court on application for restraining order, and are ready to produce the same before the Court at any and all times, and tender them for inspection of the said defendants at any time; all your orators' title deeds being of record in Colquitt and Thomas Counties, as aforesaid.

XXVI.

Inasmuch as your orators are remediless otherwise than in this Honorable Court, and that the said defendants and each of them may be required to answer unto your orators' complaint, but not under oath, answer under oath from each and all of said defendants being hereby waived, your orators pray as follows:

First. That the Court will grant immediately a temporary restraining order, retraining each and all of said defendants from boxing the trees on any part of said aforesaid tract of land composed of lots 353, 354, 283 and 384 in the 8th District of Colquitt County aforesaid, and from dipping or carrying away turpentine therefrom, and from cutting or conveying away any of the timber on said tract of

land, and from interfering with said tract of land or any part thereof in any way, and from selling or causing to be sold, or from conveying or attempting to convey to any other person any right or interest in or to said land, or the timber or turpentine on the same, and that the defendants shall be required by order of Court to show cause at an early date why said restraining order should not be continued *pendente lite*, and that the Court will in due course by final decree make said restraining order permanent.

Second. That the Court will by final decree, require the said defendants to deliver up in Court to be cancelled, the aforesaid fraudulent deeds and leases hereinbefore stated in this bill, as constituting clouds upon your orators' title. That the defendants and each of them shall be decreed to make an accounting to your orators for the value of all turpentine and timber taken from said tract of land, and that your orators may have judgment against each of the said
14 defendants for their respective amounts so found to be due your orators as aforesaid.

Third. Your orators pray the Court's most gracious Writ of Subpena directed to the said H. T. Crawford, William McMullin, John McMullin, W. W. Ashburn and John H. Hightower, requiring them under the pains and penalties to be set forth therein to appear and answer unto this bill of complaint, but not under oath, answer under oath being hereby expressly waived as aforesaid.

May it please your Honors to grant unto your orators such other and further relief as the nature of their case may require and to the Court may seem meet and proper, and your orators will ever pray, etc.

MARION ERWIN.
MERILL P. CALLAWAY,
Solicitors for Complainants.

ABSTRACT OF TITLE—EXHIBIT "A."

(1) Lot 383 in the 8th District of originally Irwin County, now Colquitt County, Georgia; plot and grant State of Georgia to Eli Graves, dated Sep. 23, 1843.

(2) Lot 384 in the 8th District originally Irwin County, now Colquitt County, Georgia. Plot and grant, State of Georgia to Eli Graves, dated Sep. 23, 1843.

(3) Lot 354 in 8th District of originally Irwin County, now Colquitt County, Georgia. Plot and grant, State of Georgia to Eli Graves, dated July 9, 1844.

(4) Lot 353 in 8th District of originally Irwin County, now Colquitt County, Georgia. Plot and grant, State of Georgia to Eli Graves, dated Sep. 23rd, 1843.

(5) Warranty deed from Eli Graves to Joel S. Graves, dated March 22, 1848, to forty lots, including among others said lots 383, 384, 354 and 353, above mentioned, and also lots 437 and 345, in said 8th District. Recorded in clerk's office of the Superior Court of Thomas County, Ga., March 15, 1849, in Book E, p. 371. And

recorded in the clerk's office of the Superior Court of Colquitt County, Ga., Aug. 20, 1886, in Book B, (D R.), pages 606 and 607.

15 (6) Warranty deed from Joel S. Graves to Cyrus S. Graves, dated June 8th, 1855, to said tract of land made up of lots 383, 384, 354 and 353, aforesaid, and to lots 437 and 345 aforesaid. Recorded in the clerk's office of the Superior Court of Thomas County, Georgia, in Book of Deeds F, p. 677, on June 11, 1855. And recorded in the clerk's office of the Superior Court of Colquitt County, Georgia, in Book C (D. R.), pages 408 and 409, on April 2, 1889.

(7) Warranty deed from Jennie L. Graves to Ida J. Graves and Minnie C. Graves, dated March 30th, 1889, to the undivided one-third interest of said Jennie L. Graves in said lots numbers 345, 354, 383, 384 and 437. Recorded in the clerk's office of the Superior Court of Colquitt County, Georgia, April 2, 1889, in Book C (D. R.), p. 410.

EXHIBIT "B."

GEORGIA, *Colquitt County:*

Before me the subscriber, John M. Wilkes, Judge of County Court of said county, personally comes Wm. M. McMullin and on oath says that Ida J. Graves and Minnie C. Graves and Jennie L. Graves are indebted to him in the sum of five hundred dollars, principal, with interest at — per cent per annum from — day of ——, 18—, and — per cent on the principal and interest for attorneys' fees, and that said Ida J. Graves and Minnie C. Graves and Jennie L. Graves resides each without the limits of said State of Georgia, to-wit, within the State of New York.

(Deponent) W. M. McMULLIN.

Sworn to and subscribed before me, this sixth day of June, 1898.

J. A. WILKES,
Judge County Court.

GEORGIA, *Colquitt County:*

The undersigned principal and sureties acknowledge themselves bound unto the defendants named in the foregoing affidavit in the sum of one thousand (1000.00) dollars, subject to the follow-

16 ing conditions: That the said principal is seeking an attachment against the said obligees herein, which is now about to be sued out in Colquitt County Court: Now if the said principal shall pay all damages that the said obligees may sustain, and also cost that may be incurred by them in consequence of suing out such attachment, in the event that the said principal shall fail to recover in said case, then this bond to be void.

[L. S.] W. M. McMULLIN, *Principal.*
[L. S.] J. W. McMULLIN, *Surety.*
[L. S.] D. McDOUGALD, *Surety.*

Executed the 6 day of June, 1898, in presence of

J. A. WILKES,
County Judge.

GEORGIA, *Colquitt County:*

To All and Singular the Sheriffs and Constables of said State:

You are hereby commanded to attach and seize so much of the property of Ida J. Graves, Minnie C. Graves and Jennie L. Graves as will make the sum of five hundred (500.00) dollars and no cents, principal, with interest at 7 per cent per annum from 6 day of June, 1898, and all costs, and also serve such summons of garnishment as may be placed in your hands, and that you make return of this attachment, with your acting and doings entered thereon, to the next quarterly term of *of* County Court of said county, to be held on the 1st Tuesday in August, 1898, to which Court this attachment is made returnable.

Herein fail not.

Witness by hand and seal this sixth day of June, 1898.

J. A. WILKES,
County Judge.

Sheriff's Return.

GEORGIA, *Colquitt County:*

I have this day levied the within attachment on wild lot of land three hundred and fifty-four (354) Eighth (8) Land District of said County of Colquitt, Georgia. Levied on as the property of Ida J. Graves, Minnie C. Graves and Jennie L. Graves to satisfy this attachment.

This 10th day of June, 1898.

J. S. FISHER,
Sheriff Colquitt County, Ga.

17 (Indorsement on attachment:) The State of Georgia, Colquitt County. County Court, Aug. Quarterly Term 1898. W. M. McMullin *versus* Ida J. Graves, Minnie C. Graves, Jennie L. Graves. Attachment filed in office June 6, 1898. J. A. Wilkes, County Judge. Pearsall & Shipp, Pl'ff's Att'y.

Georgia, Colquitt County: Entered on attachment docket Dec. 1st, 1898. G. W. Newton, Clerk.

GEORGIA, *Colquitt County:*

To the County Court of said County:

W. M. McMullin brings this his petition against Ida J. Graves, Minnie C. Graves and Jennie L. Graves, and alleges:

1st. Defendants are indebted to petitioner in the sum of five hundred dollars ($500.00), on open account, a copy of which is hereto attached.

2nd. The defendants have not paid said account nor any part thereof and same is past due.

3rd. On the 6th day of June, 1898, petitioner sued out before J. A. Wilkes, Judge of County Court of Colquitt County, Georgia, an attachment against the said defendants for said debt, returnable to the

August quarterly term of this Court, which said attachment was on the 10th day of June, 1898, levied by J. S. Fisher, sheriff of said county, upon the following property, to-wit: "Lot of land number three hundred and fifty-four (354) in the eighth (8th) land district of said County of Colquitt, the same being wild land." Levied on as the property of Ida J. Graves, Minnie C. Graves and Jennie L. Graves.

Wherefore petitioner prays judgment for said debt, as allowed by law, and that said property be sold to pay same.

PEARSALL & SHIPP,
Petitioner's Attorneys.

18 Minnie C. Graves, Jennie L. Graves, and Ida J. Graves in acct. with William McMullin.

1895.			
Feb.	14.	To trip to Thomasville to defend lot of land, No. 384, 8th Dist., C. C. Ga.....	$10.00
		To services 3 days, searching for plats and grants, at $3.00.....	9.00
		To attending trial at Thomasville, expenses of the trip.....	10.00
		To paid clerk of Court for copying deed (G. W. Newton)	1.50
March	15.	To attendance at trial at Thomasville second time	10.00
		To trip to Jas. Murphy's for witnesses to prove height of boxes.....	22.00
		To cash paid to notary public.....	.50
Apl.	10.	To 3rd trip to Thomasville for trial in defense of lot No. 384.....	10.00
1898.			
Feb.	10.	To general services rendered for attending to returning lots of land Nos. 383, 384, 354, 345, 437, and guarding against trespassing for 12 years	600.00
			$653.00
		By credit to reduce to County Court jurisdiction	153.00
		Bal	$500.00

(Indorsement on Petition:) August Term, Colquitt County Court. Quarterly. W. M. McMullin *vs.* Ida J. Graves, Minnie C. Graves, Jennie L. Graves. Attachment. Declaration. Filed in office this 2nd day of August, 1898. J. A. Wilkes, Judge & *Ex Off.* Clerk. Pearsall & Shipp, Petitioner's Att'ys.

Judgment.

Nov. Quarterly Term, 1898, Colquitt County Court.

WILLIAM MCMULLIN
vs.
MINNIE C. GRAVES, IDA J. GRAVES, JENNIE L. GRAVES.

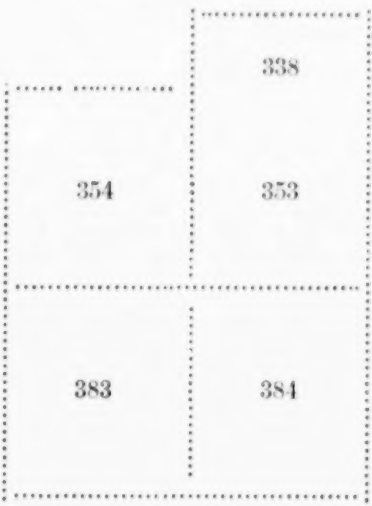
Whereupon it is ordered and adjudged by the Court that
19 the property attached as the property of defendants, Minnie C. Graves, Ida J. Graves, Jennie L. Graves, to-wit: Lot of land three hundred and fifty-four (354) Eighth (8) Land District, Colquitt County, Ga., the same being wild lot of land, be sold and that the plaintiff recover out of the proceeds of the sale of the same, the sum of five hundred (500.00) dollars, principal, the further sum of nine (9) dollars interest to date and all future interest at the rate of 7 per cent. per annum on said principal sum and the further sum of six dollars ($6.00) as costs of suit.

Judgment signed this Nov. 14th, 1898.

J. A. WILKES,
Judge County Court, Colquitt Co., Ga.

PEARSALL & SHIPP,
Plaintiff's Attorneys.

EXHIBIT "C."



SOUTHERN DISTRICT OF GEORGIA, *ss:*

Before the undersigned personally comes Jennie L. Graves, Ida J. Graves, and Minnie C. Graves, who being duly sworn deposes and say each for themselves that they have read the foregoing bill
20 and are acquainted with the contents thereof, and that all matters stated therein as of their own act or deed, or of their own knowledge are true and as to all matters stated therein on information and belief they believe them to be true.

JENNIE L. GRAVES.
IDA J. GRAVES.
MINNIE C. GRAVES.

Sworn to and subscribed before me this 28th day of April, 1899.

WM. E. MARTIN, JR.,
Notary Public, Bibb Co., Ga.

Restraining Order and Rule Nisi.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES, IDA J. GRAVES, and MINNIE C. GRAVES
vs.
H. T. CRAWFORD ET AL.

Restraining Order. Order to Show Cause.

Upon consideration of the allegations of the foregoing bill, and of the evidence offered by complainants in support thereof it is ordered by the Court that the defendants, H. T. Crawford, William McMullin, John McMullin, W. W. Ashburn and John H. Hightower show cause before the undersigned judge at the United States court room in the City of Macon, Georgia, on the 10th day of May, 1899, at ten o'clock A. M., why they should not be restrained *pendente lite* as in said bill prayed. In the meantime the said defendants and each of them are restrained from boxing the trees on any part of said tract of land composed of lots numbers 353, 354, 383 and 384 in the 8th District of Colquitt County, Georgia, and from dipping or carrying away turpentine therefrom, and from cutting or conveying away any of the timber on said tract of land and from interfering with said tract of land or any part thereof in any way, and from selling or causing to be sold or from conveying or attempting to convey to any other person any right or interest in or to
21 said land or any part thereof, or the turpentine or timber on the same.

Let a copy of this order with the bill attached be served upon defendants.

EMORY SPEER,
U. S. Judge.

April 28th, 1889.

SOUTHERN DISTRICT OF GEORGIA:

I certify that on May 3rd, 1899, in Colquitt County, in my district, I personally served a copy of the within restraining order with bill attached upon H. T. Crawford, Wm. McMullin and John McMullin (each personally); also on same day at Tifton, in said district, I personally served a copy of said order and bill attached on John W. Hightower; all of said parties being defendants within named.

The return of:

JOHN M. BARNES,
U. S. Marshal.

(Indorsement on Original Bill:) In the Circuit Court of the United States, Eastern Division, Southern District of Georgia. No. 481. Jennie L. Graves, Ida J. Graves and Minnie C. Graves *vs.* H. T. Crawford, *et al.* Bill. In Equity. Filed April 29th, 1899. Lenoir M. Erwin, Deputy Clerk.

* * * * * * *

Answer of J. W. Hightower.

In the United States Circuit Court, Eastern Division, Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Answer of J. H. Hightower.

And now comes John W. Hightower and for answer to said Bill and Rule to show cause says, that it is true that for the Union Lumber Company, a partnership of which he is a member and which is about to be organized as a chartered company, he did take a lease for said company from W. W. Ashburn for the timber privi-
22 leges on the north half, 245 acres, of lot No. 353 in the 8th District of Colquitt County, Georgia, but neither he nor his said company has cut any timber on said lot nor do they intend to do so until the rights of the parties have been determined; so far as he is advised the timber on said north half of said lot is still undisturbed except that it was turpentined prior to the aforesaid lease. That he took said lease believing the representation of said W. W. Ashburn that he had title to said land, and that as the said Ashburn is a party to this cause he calls upon the said Ashburn to defend his title.

JNO. W. HIGHTOWER.

(Indorsement:) No. 481. In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia. Jennie L. Graves, *et al., vs.* H. T. Crawford, *et al.* In Equity, Bill, Etc. Answer of John W. Hightower. Filed this 10th day of May, 1899. L. M. Erwin, Deputy Clerk.

Answer of Wm. McMullin.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

JENNIE L. GRAVES, IDA J. GRAVES, and MINNIE C. GRAVES
vs.
H. T. CRAWFORD ET AL.

Bill in Equity.

And now comes William McMullin, one of the defendants in the above stated cause upon whom has been served an order from this Honorable Court enjoining and restraining him from boxing the timber on the land in said bill described, and calling upon him to show cause before the Circuit Court of the United States to be holden in the City of Macon, Georgia, on May 10th, 1899, at 10 o'clock A. M., why said injunction should not be continued *pendente lite* and thereafter made permanent, and making for himself separate answer says:

1st. That he submits the bill presents no case upon which the jurisdiction of the Court of Equity can be founded, as there are plain and adequate remedies at law for the correction of any
23 of the matters and things alleged, if so be that the allegations are true.

2nd. That he submits that these same plaintiffs have in the Superior Court of Colquitt County an equitable petition pending against him involving the legality of the attachment proceedings as in this bill involved, and that there is pending against him an injunction *pendente lite* involving the same subject matter.

3rd. That he submits that the bill presents no question arising under the Constitution or laws of the United States to give jurisdiction to this Honorable Court.

4th. That he submits if the case as presented were one for equitable jurisdiction, that the bill is multifarious and cannot be maintained.

5th. That the bill is totally defective, for the purpose of the motion, in its allegations, and in the verification in this that there is no sufficient averment of irreparable injury and statement of facts supporting it, and the material facts on which the injunction is sought are not positively sworn to by the complainants.

I.

Deponent further says that he was acquainted with Eli and Joel G. Graves, and while said Eli Graves was regarded as reliable, the said

Joel S. Graves had the reputation of being irresponsible and unscrupulous in his dealings, and being careless in selling and conveying the same lands to different parties, and the earliest troubles as to land titles in Colquitt County are said to have arisen from his said questionable conduct and dealings. Respondent is not advised — to the number of lots granted to said parties.

II.

Respondent is informed that Eli Graves made a deed to Joel S. Graves as alleged. It is true that said Graves built a brick church but respondent has always understood that the money for this purpose was donated by the members of the Presbyterian Church resident in the North. It is perhaps also true that the school
24 house was built as alleged in a vast wilderness, both of said structures formerly pointed out as objects of local historical interest. Of equal historical importance and equal irrelevance, is the information in this paragraph as to the cooperage factory, which in local parlance always bore the less pretentious title of the "bucket shop."

III.

Respondent is informed that the said Joel S. Graves became at one time heavily indebted to Cyrus S. Graves or rather to the father of said Cyrus S. Graves, namely Abraham Graves, and conveyed certain lands to him as security deed for said indebtedness, and that said indebtedness was never paid.

IV.

Respondent has no certain information as to the truth of the allegations in paragraph 4.

V.

It is admitted that certain lands in the county were known to some persons as "the Graves lands," but these lots not more specially than other lots in the county.

VI.

Respondent is informed that Cyrus S. Graves entered the service of the Confederacy as a conscript, but as to the time and place of his death respondent has no information. So far as respondent's information, derived from general reputation, goes, these complainants are the heirs of said Cyrus Graves.

VII.

Respondent admits the residence of these complainants to have been Courtland, New York. He knows nothing of their residence in the City of Saratoga.

VIII.

It is admitted that the timber on these lands is of some value; he denies, however, that these four lots including the timber are worth
$10,000. As agents for these complainants, respondents for
25 several years returned all these lands, except No. 353, for taxation at $1.00 per acre, and from about the year 1893 they were returned for taxation at a valuation of $2.00 per acre, and complainants repeatedly complained of over valuation. And within a very short while since, during the current year, complainants went before the tax assessors of Colquitt County and claimed a valuation of only $2.00 per acre for these lands, and have paid last year's taxes accordingly. As to lot 353, same has never been returned for taxation except by parties claiming adversely to complainants.

IX.

Respondent is not advised as to the truth of the allegations in this 9th paragraph.

X.

Respondent is not advised as to the truth of the allegations touching the visit and inspection by complainants of the lands in question. It is admitted that complainants visited respondent as alleged, and also true that one of complainants claimed to have rendered some service or act of humanity to respondent's brother; also true that she gave respondent's wife $5.00, but such payment and such conversation related entirely to past services rendered by respondent to these complainants, and was no part or parcel of a consideration for services to be rendered in the future, as neither respondents or complainants could know the nature and extent of such services as might be necessary to protect the interest of complainants in these lands.

XII.

It is admitted that the firm of McIntyre & McIntyre of Thomasville represented these complainants in their litigation in Colquitt County as to some of these lands, and respondent understood that they represented them generally. Respondent has been informed that the title to these lands was conveyed by Jennie L. Graves to her daughters as alleged.

XIII.

Respondent admits that at some cost and at considerable loss of time he did look for and finally locate the block deed as mentioned, and hunted up the old plats and grants and turned them over to
complainants' attorneys, and that a suit was instituted
26 against Norman as alleged, but he knows nothing of the terms of settlement made by complainants with their attorneys for their fees.

XIV.

It may be true as alleged that complainants have paid their taxes, but he shows, however, that the lands in question *was* levied on by the sheriff of Colquitt County for taxes due, complainants having refused to pay the same for the year —.

XV.

As to the first part of said paragraph touching the notification by respondent and subsequent suit is admitted, he has information that a settlement has been arrived at by the complainants and said Autrey, under the terms of which the timber on said lot is now owned by said Autrey, and complainants have said Autrey quit claim deed to the land.

XVI

Respondent has no knowledge or information as to the allegation in this paragraph, only his information that these complainants have never claimed title to said lot 353 until very recently.

XVII.

It is true that A. T. McIntyre, Jr., bid in the property as alleged, but denies that it was worth $2,500.00 or thereafter.

XVIII.

It is denied that respondent was a party to any such agreement as alleged or that he knew of such an agreement. He has information that sale under order of Court was made by Hayes, administrator, to John McMullin and from McMullin to said H. T. Crawford; as to the terms of said transaction he has no information. Respondent does not now nor never has claimed any title, right or interest in any of the lands claimed by these complainants. That he does not now nor never intended to commit any act of trespass on said lands or part of same. He further shows that he never received one cent or anything of value directly or indirectly for any sale of lands or timber claimed by complainants nor has he ever
27 been a party directly or indirectly in fact or by any implication, agreement or understanding between A. T. McIntyre, Sr., A. T. McIntyre, Jr., John McMullin, or H. T. Crawford, or any or either of them or any one else; nor does he know or have any reason to know or believe that there has been any improper conduct on the part of these parties or either of them.

XIX.

It is true that said Crawford has entered upon lot of land No. 383, but has information that he did so under a chain of title.

XX.

It is admitted that Crawford has entered upon the South half of Lot 353, but has not used same for turpentine purposes, as timber had previously been used by other parties. He knows nothing of his entry upon Lot 354.

XXI.

Respondent denies paragraph 21 so far as it relates to any combination or confederacy on his part with any party or parties whatsoever.

XXII.

Respondent admits that he sued out an attachment as alleged, but in doing so he was acting in the utmost good faith prompted by a desire to secure what was justly his own. He had not been in correspondence with them in some time, he having months previously terminated his relation with them as agent. As to what notice or manner of service was perfected upon them he has no information. He shows in this connection that the claim upon which said attachment was issued is a just, true and equitable one and is willing for its merits to be passed upon by any court of competent jurisdiction.

XXIII.

Respondent was not the agent of complainants at time alleged in this paragraph. John McMullin was never an agent of complainants under respondent. As to the record of the deed he has no information.

28 XXIII.

As before stated, at the time of attachment he was not the agent of these complainants. Par. 23 is denied.

XXIV.

If true as alleged that there was no contract for services that respondent performed valuable services as set out in said attachment and that complainants accepted and received the benefits of the same and has never paid him any value therefor. It is denied that the failure of this Honorable Court to open up said judgment will result in the sale of said land as respondent is enjoined by order of the Superior Court of Colquitt County involving this same subject matter and between these same complainants. He denies any and all wrong or improper conduct on his part as alleged.

XXV.

Respondent has no information as to this paragraph.

Respondent having fully answered this bill prays the Court that the temporary restraining order be dissolved, the prayed for in-

junction *pendente lite* be denied, and that he be allowed to go without further answer with his reasonable cost and said proceeding dismissed, etc.

M. J. PEARSALL,
Respondent's Solicitor.

GEORGIA, *Colquitt County:*

Personally appeared before me: William McMullin, the respondent in the foregoing answer to bill in equity, in the Circuit Court, who after being duly sworn says that the above and foregoing answer is true.

WM. McMULLIN.

Sworn to and subscribed before me this May 6th, 1899.

[SEAL OF NOTARY.] Z. H. CLARK,
Notary Public, Colquitt County, Ga.

(Indorsement:) No. 481. In U. S. Circuit Court, Eastern Division, Southern District of Georgia. No. 481. Jennie L.
29 Graves, Ida J. Graves, Minnie C. Graves *vs.* H. T. Crawford, *et al.* Bill in Equity. Answer of the defendant, Wm. McMullin. Filed May 11, 1899. Cecil Morgan, Deputy Clerk. Matt J. Pearsall.

Answer of W. W. Ashburn.

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Answer of W. W. Ashburn.

And now comes W. W. Ashburn, one of the defendants upon whom has been served an order from this Honorable Court enjoining and restraining him from boxing the trees, or removing the gum from any of the lands described in said bill, and calling upon him to show cause before the Circuit Court to be held in Macon on the 10th day of May, 1899, why he should not be restrained *pendente lite*, and for himself making a separate answer, without waiving any rights of his plea or demurrer, and making answer to be used at this hearing as in the nature of an affidavit, and for plea and answer says:

1. In answer to paragraphs 1 to 7th, inclusive, respondent says that he is not, and never has been, a resident of Colquitt County, nor has he ever known the complainants, in fact, never having seen

them until a few months past, and knows of nothing of their family history, nor their manner and mode of living; and for want of sufficient information can neither affirm or deny the allegations in said paragraphs.

2. Answering paragraph 8th, respondent admits that the timber on said lands described is of value, but he denies that the five lots mentioned are of the value of ten thousand dollars.

3. In answer to paragraphs 9 to 15, inclusive, respondent has no reliable knowledge or information as to the matters and things set forth in said paragraphs, and for want of such information can neither affirm or deny the same.

30 4. Respondent, answering paragraph 16th, says that in the year 1890, your respondent purchased from A. T. McIntyre, Jr., and A. M. Watson, some seventeen or eighteen thousand acres of land, among them being the north half of lot 353. That A. T. McIntyre, Jr., bore the reputation at that time, and so far as respondent knows, was an honorable, upright and reputable attorney in the City of Thomasville. A. M. Watson was a man of means, and also bore a reputation for honesty and integrity, and so far as respondent knows, or has reasons to suspect, both McIntyre and Watson were upright and honest men at the time alleged, or at any other time. Respondent bought from said McIntyre and Watson said land for a valuable consideration, and without any notice, or grounds of notice, of any claim whatever on the part of these complainants, or either of them, to said lot. That his titles to the same were submitted for approval and examination to Hon. D. H. Pope, of Albany, a lawyer of ability and deserved reputation for honesty and integrity, and said D. H. Pope approved the title to said lot as being the property of A. T. McIntyre, Jr., and A. M. Watson.

Respondent, in further answer, says that at the time of said conveyance, that neither of the complainants made any claim whatever to the north half of lot 353, that the same was not returned by them or their agent for taxation. And respondent further says that on the 10th day of January, 1899, said complaints, and each of them, in an affidavit to be used in an equitable proceeding in Colquitt Superior Court, swore that Jennie L. Graves, one of the complainants in this bill, had no interest in the lands in Colquitt County.

Respondent further says that in a conveyance made in the year 1889, in which one of the complainants, Jennie L. Graves, conveyed all of her interest in the lands in said county to her two daughters, the other complainants in this bill, she did not convey this lot 353, and did not at that time, or at any time subsequent to the filing of this bill, make any claim whatever to said land.

Respondent further says that neither of the complainants have any interest whatever in said lot 353. The said Cyrus Graves, during his lifetime, conveyed the same to his father, Abraham Graves, and by proper chain of title from Abraham Graves, was conveyed to your respondent.

Respondent further says that he, and those under whom he claims, have for more than seven years prior to the filing of said bill, been in the continued, exclusive, uninterrupted, peaceable and adverse,

actual possession of said lot, accompanied by a claim of right
31 under written evidence of title, which said possession was in the right of the possessors and not in another, and did not originate in fraud.

Respondent further says that at the time of the making of said deed from McIntyre & Watson to himself, he had never heard of these complainants, or either of them, and did not know that A. T. McIntyre, Jr., or the firm of McIntyre & McIntyre, had any connection whatever, directly or indirectly, with any of the lands claimed by these complainants.

Respondent admits that he has conveyed to the Union Lumber Company, by a lease, the saw mill privileges of the timber on said north half of said lot, and that the value of the north half of said lot, including the timber thereon, does not exceed the value of seven hundred and fifty dollars ($750.00).

Respondent, for further answer, says that he does not claim any title or interest in lots 354, 383, 384, 345 and 437, nor to the south half of lot 353, nor has he threatened to enter upon the same, or trespass in any manner whatever, nor does he intend so to do. This respondent has no connection whatever, directly or indirectly, with the other of said defendants, except that he has conveyed the timber on the north half of said lot 353 to the Union Lumber Company, of which John W. Hightower is a member.

5. Respondent, in answer to paragraphs 17 to 25 inclusive, says that he knows nothing whatever of the allegations contained in said paragraphs; that he was not a party in any way, nor did he have any knowledge of the fraudulent conduct as set out therein, and has no interest, directly or indirectly, in any of the lands mentioned therein.

6. Respondent further shows that he is perfectly slovent, and able to respond in any damages that he may do these complainants, or their property.

And having fully answered said bill, prays that the relief therein asked for as against him be denied, and that he be dismissed from further answer in said case, with his reasonable costs.

MATT J. PEARSALL,
Respondent's Solicitor.

UNITED STATES OF AMERICA,
Southern District of Ga.:

Personally appeared W. W. Ashburn, defendant in the
32 above answer, who on oath says that the matters and things therein stated of his own knowledge are true; that the matters stated upon information, he has reason to believe, and does in fact believe are true.

W. W. ASHBURN.

Sworn to and subscribed before me this 10th day of May, 1899.

CECIL MORGAN,
Deputy Clerk.

[Seal U. S. Circuit Court.]

Indorsement. # 481 U. S. Circuit Court, Western Division of the Southern District of Georgia. # 481. Jennie L. Graves, *et al. vs.* H. T. Crawford, *et al.* Answer of W. W. Ashburn. Filed May 11, 1899. Cecil Morgan, Deputy Clerk. Matt J. Pearsall, Deft's Solicitor.

Answer of H. T. Crawford.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

This defendant, H. T. Crawford, not waiving his demurrer, or plea, for answer to said bill, or to so much thereof as he is advised it is material for him to answer, in response to the rule *nisi* served upon him in said cause, now answers as follows, this answer being intended to serve the purpose only of an affidavit upon said hearing, and in answer to said rule to show cause:

1st. This respondent became a citizen of Colquitt County, Georgia, in the year 1890, having previously lived in Dooly and Johnson County; so that the respondent, for want of sufficient information, can neither affirm or deny the paragraphs of the complainant's bill giving the history of their ancestors, and of their title and of their former residence, and which is comprised in the paragraphs of said petition from one to seven, inclusive. Whatever may have
33 been known to other citizens of said county as to said previous history can not be charged against this respondent, and, in fact, he had no notice of said matters alleged in said paragraphs. This respondent wholly denies that the complainants are the owners of the legal title to lot three hundred and eighty-three (383) and to the south half of lot three hundred and fifty-three (353), in which land only he is interested, as hereinafter more fully set forth.

Respondent has no information as to the deeds upon which complainant relies, except that in or about the month of January, 1899, respondent met the complainant, Mrs. Jennie L. Graves, under the following circumstances: Respondent was introduced to this complainant near Moultrie, by Mr. Pidcock, the Superintendent of the Georgia Northern Railroad. Mr. Pidcock remarked to her, in the presence of respondent, that respondent had a title to one of the lots which she claimed, and that he knew respondent to be an honest man, and that his title was taken and held in good faith. Mrs. Graves invited respondent to go to Moultrie, where she herself was going, and in the conversation, when respondent met her there, the said Mrs. Graves stated that Joel S. Graves had borrowed from her husband, Cyrus Graves, the sum of six thousand dollars, and after so doing, had applied to her husband for an additional loan of one thousand dollars ($1,000); that her husband thereupon stated to

the said Joel S. Graves that before he could get any more money, he must give security for what he already had borrowed; that thereupon the said Joel S. Graves did give as security to the said Cyrus Graves six lots of land in formerly Thomas, now Colquitt, County, and that these were the six lots which she then claimed, and which are the six lots set out in the bill.

2nd. This respondent has no knowledge or information as to the averments embraced in paragraphs from nine to sixteen (9 to 16) inclusive, in reference to the relations and transactions between A. T. McIntyre and William McMullin. Respondent denies the 17th and 18th paragraphs, and specially and positively denies the charge in the 18th paragraph that in October, 1898, an agreement was entered into between A. T. McIntyre, Sr., William McMullin and John McMullin and this respondent, which agreement was kept secret from the complainants, whereby a conveyance of lot three hundred and eighty-three (383) was to be made from Samuel L. Hayes, Administrator of A. T. McIntyre, Jr., at private sale,
34 to John McMullin, for the sum of five hundred dollars ($500), and that the said John McMullin would immediately convey the same lot to the said H. T. Crawford for the sum of fifteen hundred dollars ($1500), or that this amount was largely below the value of said lot at that time; and respondent further denies that at the time he took the deed from the said John McMullin, he had notice that the title to said lot of land three hundred and eighty-three (383) was in the complainants, or that the said John McMullin had no right, title or interest in the same. On the contrary, respondent states that the true history of said transaction, so far as he is concerned, is as follows: Respondent is engaged in the manufacture of naval stores, and is an operator in turpentine in the County of Colquitt, and carrying on a considerable business. Respondent was approached by John McMullin, who offered him lot three hundred and eighty-three (383), stating that he was prepared to make good title to the same. Respondent at that time had never met William McMullin, with whom he is alleged to have been in confederacy, and had never met at that time either A. T. McIntyre, Senior, or A. T. McIntyre, Junior. Respondent was informed that the title to the lot was in the estate of A. T. McIntyre, Junior, but the said John McMullin represented that the legal title to said lot was in the estate of A. T. McIntyre, Junior, and that an order had been obtained for the sale of this lot at private sale. Respondent stated to said John McMullin that he would give fifteen hundred dollars ($1500) for said lot, which respondent believed to be its full and fair value, if a good title could be obtained, and if the title should be approved by his regular professional advisers at Thomasville, Messrs. Hansell & Merrill. Respondent avers that these gentlemen are counsel learned in the law and of high professional standing, and that before taking a deed to the property, he submitted to Messrs. Hansell & Merrill the evidences of title which will be to the Court shown in connection with this answer; and thereupon Messrs. Hansell & Merrill gave to this respondent their written opinion as to said title, which will be shown to the Court upon this hearing.

Respondent submits that his action in this matter in the consultation of counsel shows that he was acting, not only in good faith, but with business care and caution, and that he obtained the advice of counsel, who, as otherwise appears, upon this hearing represented the complainants themselves in litigation which they instituted in the Superior Court of Colquitt County.

The deed to said McMullin was made by S. L. Hayes, Ad-
35 ministrator of A. T. McIntyre, Junior, who was president of the Thomasville Bank, a responsible gentleman of business prudence and sagacity. The order for such sale had been passed by His Honor Augustus H. Hansell, Judge of the Superior Court of the Southern Circuit, and therefore no indications or circumstances whatever to put respondent on notice of any wrong or improper conduct on the part of any one connected with the transaction.

Respondent further states that the said A. T. McIntyre, Senior, is a man of great prominence and high standing in that section of the State; that he is an ex-member of Congress, a prominent member of the Presbyterian Church, a member of the Board of Trustees of the University of the State; that his son, A. T. McIntyre, Junior, was a graduate of the same university, and a lawyer of prominence and standing in the same section of the State. Although respondent was comparatively a newcomer to said section of the country, he knew the standing of the gentlemen above named, and it did not enter into his mind for one moment to suspect that there could be anything whatever sinister or improper about the transaction which resulted in respondent's purchase of said lot. After the trade had been made, respondent remembers that the said John McMullin stated to him that he had a half interest in the lot; that the legal title to the lot was in the estate of A. T. McIntyre, Junior, and that the entire legal title would pass by the conveyance of his administrator; but respondent understood that this $500.00 only represented a half interest in the lot. And respondent, in perfect good faith, paid for said lot fifteen hundred dollars, which was paid by draft on his factors in Savannah, which is now in Court shown, which sum was the full value of said lot. Respondent has since sold the said lot by warranty deed to G. W. McCormick, reserving only the timber lease of said land for four years, and which does not exceed the value of one thousand dollars ($1,000); respondent made this sale on December 31, 1898, before respondent had ever heard of any claim of the complainants to this lot.

4. The only other right, interest or title which this respondent claims in any of the several lots described in the bill is his claim of title to the south half of lot three hundred and fifty-three (353). Respondent avers that he and those under whom he claims have been in the open, notorious, peaceable, exclusive, adverse and uninterrupted possession of said lot under written evidence of title more than seven years prior to the filing of the complainants' bill.

36 Respondent states that he purchased this lot from D. M. Reaves at the time he purchased the turpentine business of said Reaves, and gave him for said lot the sum of six hundred and

thirty-five dollars ($635.00) in cash, and respondent says that the value of said lot, with all improvements thereon, at present does not exceed the sum of seven hundred dollars ($700). Respondent denies the allegations of the bill in paragraphs eight, seventeen and elsewhere as to the value of said lands wherever they are inconsistent with the valuations hereinbefore stated, namely, one thousand dollars ($1,000) as the full value of the timber on lot three hundred and eighty-three (383), and seven hundred dollars ($700) as the value of the land on the south half of lot three hundred and fifty-three (353), from which the timber was cut and removed prior to respondent's purchase of the same. If complainants ever had any title to said lot, they had abandoned the same, and it was omitted from the deed of Mrs. Jennie L. Graves to her daughters, and for many years successively they failed ever to return said lot for taxes.

5. Respondent denies that he has or ever has had any claim of any right, title or interest in lots three hundred and forty-five (345), four hundred and thirty-seven (437) and three hundred and fifty-four (354), and he has none in three hundred and eighty-four (384), except the privilege of working discarded boxes under D. A. Autrey, who is the owner of said timber, as appears from the complainants' bill, and respondent denies any trespass whatever on said lot three hundred and fifty-four (354).

6. Respondent has no knowledge or information as to the allegations in the petition from number 22 to 24, inclusive, relative to the controversy between William McMullin and the complainants.

7. Respondent admits that he has boxed the timber on lot three hundred and eighty-three (383), and that he is now working the turpentine thereon. This boxing had begun before respondent was ever apprised of any claim of title on behalf of the complainants. Respondent shows to the Court that an injunction against the working of said turpentine will be an irreparable injury to the turpentine privilege, and will greatly endanger the timber on said land. Respondent shows that it is always dangerous to leave boxes of
37 turpentine in the condition they now are on said lot at this time of the year, and that this usual danger is greatly enhanced at the present time by reason of the following circumstances: The severe cold weather in February of the present year destroyed to a large extent the foliage or spines on the pine timber, and the same has now fallen off upon the ground as straw, and on or about the last day of April a fire broke out in this straw and destroyed about one hundred (100) boxes of turpentine on said lot three hundred and eighty-three (383). This fire broke out while respondent was working the turpentine and while his hands were present, so that the conflagration could be checked, but respondent insists that if he should be enjoined and ordered to desist from working said timber, that the destruction of the same by fire would be not only a probability, but almost a certainty, and even if the fire should not consume the pine forests, the turpentine itself would be a total loss.

8. Respondent is abundantly solvent and able to respond to the claim of the complainants for damages, if it should be adjudged by the Court that the complainants were entitled thereto. This

respondent is not doing any act upon the south half of lot three hundred and fifty-three (353) which in any way is an injury to the same, but simply is in the occupation thereof with his turpentine distilleries, and respondent submits that no possible injury or damage could accrue to the complainants from his occupation of this lot.

9. And having fully answered, respondent prays to be hence discharged, with his reasonable costs in this behalf wrongfully sustained.

UNITED STATES OF AMERICA,
Western Division, Southern District of Georgia:

You, H. T. Crawford, do swear that what is contained in the foregoing answer is true of your own knowledge, so far as it depends on your own act and deed, and so far as it depends on the act and deed of any other person, you believe the same to be true.

H. T. CRAWFORD.

Sworn to an- subscribed before me this 10 day of May, 1899.

J. H. L. GERDINE,

[SEAL.] *Not. Pub. & Ex. Off. J. P. Bibb Co., Ga.*

38 (Indorsement): No. 481. In Circuit Court of United States, Eastern Division, Southern District of Georgia, Jennie L. Graves *et al., vs.* H. T. Crawford, *et al.* Answer of H. T. Crawford. Filed May 11, 1899, Cecil Morgan, Deputy Clerk. Hill, Harris & Birch, solicitors for Crawford.

Answer of John McMullin.

Bill in Equity.

In the Circuit — of the United States for Eastern Division of Southern District of Georgia.

JENNIE L. GRAVES, IDA J. GRAVES, and MINNIE C. GRAVES
vs.
H. T. CRAWFORD ET AL.

And now comes John McMullin, one of the defendants upon whom has been served an order from this Honorable Court, enjoining and restraining him from boxing the trees on any of the lands described in said bill or securing the turpentine therefrom, and calling upon him to show cause before the Circuit Court of the United States to be held in Macon on May 8th, 1899, why he should not be restrained *pendente lite,* and for himself making answer separately, answering says:

1st. He submits that the bill presents no case upon which the jurisdiction of the Court of Equity can be founded, as there are plain and adequate remedies at law for the correction of any of the matters and things alleged, if so be that the allegations are true.

2nd. That he submits if the case as presented were one for equitable jurisdiction, that the bill is multifarious and cannot be maintained.

3rd. That he submits that there is a misjoinder and nonjoinder of parties plaintiff and defendant.

4th. That he submits that the bill presents no question arising under the Constitution or Laws of the United States to give jurisdiction to this Honorable Court.

39 5th. That the bill is totally defective, for the purpose of the motion in its allegation, and in the verifications, in this that there is no sufficient averments of irreparable injury and statement of facts supporting it, and the material facts on which the injunction is sought are not positively sworn to by the complainants.

And for further answer this respondent says:

1. That paragraphs I to XVI, inclusive, of complainants' bill as to their ancestors' accomplishments, religious professions, industrial developments and other matters relating to these complainants' ancestors, he has no reliable information or knowledge. He has information that several lots of land in Colquitt County were granted to said successors. He has no knowledge as to the owners of any of said lots except lot three hundred and eighty-three (383), in the eighth (8) land district of said County of Colquitt; and he denies that said lot is worth two thousand ($2,000) dollars, nor are either of the other of said lots worth that amount.

As to paragraph XVII of complainants' bill, respondent says that he has no knowledge of any fraud, error, or mistake in sale of lot three hundred and eighty-three (383); he has information that same was sold under regular order and process from the Superior Court of Berrien County, and the same bid in by A. T. McIntyre, Jr., and deed taken in his, said McIntyre's, name; and respondent did not know at that time, nor before the sale hereinafter set forth, for what purposes said land was bid in. That soon afterwards said McIntyre represented to respondent that for certain services to be rendered which were rendered, in looking after some lands for said McIntyre, that he, McMullin, should become jointly and equally interested in said land. After respondent learning that said titles were genuine, he negotiated with H. T. Crawford for the sale of the same, at and for the price of fifteen hundred $1500) dollars, provided, however, that Hayes, the administrator of said McIntyre's estate, had a complete and perfect chain of title thereto. The title papers having been submitted to Hansell & Merrill, attorneys at law at Thomasville, Georgia, and they having approved the same, the sale was consummated. At that time (November, 1898,) respondent's connection with said lot of land ceased; he is not now nor has he been since said sale in any way interested in said land,

40 or in any of the lands claimed by complainants in their bill, as above stated.

3. Answering paragraph XVIII, respondent denies that there was any agreement or understanding or confederating between A. T. McIntyre, Sr., William McMullin, H. T. Crawford, S. L. Hayes, administrator, or either of them, so far as lies in the knowledge of

this respondent, or so far as he has reason or cause to believe. William McMullin was not present when the trade for said land was consummated between S. L. Hayes, administrator, respondent and H. T. Crawford, nor did he, so far as respondent is advised, know anything of the transaction. He did not receive directly or indirectly any benefits therefrom, nor so far as respondent now knows is he to receive any of such benefits. Respondent denies that there was any agreement, understanding or confederating between himself or anyone else in which any advantage was taken or attempted to be taken against these complainants.

4. Answering paragraphs XIX to XXI, inclusive, respondent has no knowledge or reliable information as to the truth of the allegations in said paragraphs, only that he does not claim nor has he ever claimed any title or interest in any part of said lands except the aforesaid lot three hundred and eighty-three (383). Nor has he ever trespassed on the same.

5. Answering paragraph XXII, respondent admits that William McMullin has sued out a writ of attachment in the County Court of Colquitt County, but as to the legality and regularity of the same he is not informed. Respondent does not know that the deed from Hayes, administrator, to himself was recorded on November 14, 1898, the date of the judgment on said attachment; the deed however was filed for record several days prior to its being recorded.

Respondent denies that he was under any moral or legal obligation to these complainants, he had nothing whatever to do with them or their lands, never saw them or had any communications with them until they came to this county this winter. He denies that he ever confederated or agreed directly or indirectly with these defendants, or either of them, or any one else, against the rights or interests of these complainants.

Respondent having fully answered all the allegations as to his conduct, asks that the restraining order heretofore granted against him be dissolved and the relief therein asked for as against him
41 be denied, and that he be relieved from further answer in this behalf with reasonable costs.

MATT. J. PEARSALL,
Solicitor for Respondent.

GEORGIA, *Colquitt County:*

You, John McMullin, do solemnly swear that the matters and things contained in the above and foregoing answer are true, so help you God.

his
JOHN x McMULLIN.
mark

Sworn to and subscribed before me this the 8 day of May, 1898.

[SEAL.] Z. H. CLARK,
Notary Public, Colquitt County, Ga.

(Indorsement:) No. 481. In U. S. Court, Eastern Division, Southern District of Georgia. Jennie L. Graves, Ida J. Graves, Minnie C. Graves *vs.* H. T. Crawford, *et al.* Bill in Equity. Answer of the defendant John McMullin. Filed May 11, 1899. Cecil Morgan, Deputy Clerk. M. J. Pearsall.

Plea of W. W. Ashburn.

In the Circuit Court of the United States for the Western Division of Southern District of Georgia.

In Equity. Bill, &c.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Plea of the Above Named W. W. Ashburn to the Bill of Complaint of the Above Named Complainants.

I, the defendant, W. W. Ashburn, by protestation, not confessing or acknowledging all, or any part, of the matters or things in said bill of complaint mentioned to be true, in such manner and form as the same are therein set forth and alleged, do plead thereunto, and for plea says, that as part of respondent's answer to show cause, that all of the interest of this defendant in the above stated bill is as follows:

Defendant is the owner of the north half of lot No. 353,
42 he having heretofore conveyed to the Union Lumber Company by lease, the timber privileges on the north half of said lot; the value of which said land, together with the timber, does not exceed the value of $750.00.

Defendant claims no interest or title whatever to any or either of the other lots of land, or the timber thereon mentioned in said bill. All of which matters and things I aver to be true, and plead the same to this bill, and humbly pray the judgment of this Honorable Court whether I ought to be compelled to make any further answer to said bill.

M. J. PEARSALL,
Def't's Solicitor.

I hereby certify that the foregoing bill is, in my opinion, well founded in point of law.

MATT J. PEARSALL,
Respondent's Solicitor.

UNITED STATES OF AMERICA,
Southern District of Georgia:

I, W. W. Ashburn, being duly sworn, depose and say on oath I am one of the above named defendants; the foregoing plea is true in fact, and is not interposed for delay.

W. W. ASHBURN.

Sworn to and subscribed before me this 10 day of May, 1899.
[SEAL U. S. COURT.] CECIL MORGAN,
Deputy Clerk.

(Indorsement:) No. 481. U. S. Circuit Court, Western Division of the Southern District of Georgia. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* Plea of W. W. Ashburn. Filed May 11, 1899. Cecil Morgan, Deputy Clerk. Matt J. Pearsall, Def't's Solicitor.

43 *Demurrer of H. T. Crawford.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Separate Demurrer of H. T. Crawford.

Now comes H. T. Crawford, one of the defendants in the above stated bill, and demurs thereto upon the following grounds, to-wit:

1st. That said bill is defective for want of proper parties in this, to-wit: That the said bill charges conspiracy and fraud, whereby A. T. McIntyre, Senior, confederated with William McMullin, John McMullin and this defendant, to deprive the complainants of their alleged title to lot number three hundred and eighty-three (383) involved in said bill; and the said A. T. McIntyre, Senior, is not made party defendant to the same, but is a necessary party thereto.

2nd. Said bill is defective for the want of proper parties in this, to-wit: That the said bill seeks to set aside a conveyance from Samuel L. Hayes, administrator of A. T. McIntyre, Junior, to William McMullin, of lot of land number three hundred and eighty-three (383) involved in the bill, and declares such deed to be a cloud upon the title of the complainants; yet the said Hayes, the grantor, in said deed thus attacked and sought to be set aside, is not made party defendant of said bill.

3rd. The complainants in the bill do not hold a similar title to all of the lots involved therein, but aver that the title to lot three hundred and fifty-three (353) is in three complainants, whereas the title to the other lots is in only two of the complainants named.

4th. The said bill is multifarious in this, to-wit: That it unites various defendants who have no connection with each other, and unites various separate controversies between the complainants and the several defendants which have no connection with each other, and this defendant has no interest or concern with the several
44 trespasses and wrongs alleged in said bill against his co-defendants.

5th. Because there is no equity in said bill as against this defendant.

6th. Because complainants have an adequate and complete remedy at law.

7th. Because the allegations in said bill as to the deeds therein assailed do not show that the same constitute a cloud upon the title of the complainants, and do not show that the complainants are entitled to have the same delivered up to be cancelled.

8th. Because there is no averment of possession in the complainants of the lots so as to entitle them to maintain said bill.

9th. Because the abstract of title attached to said bill is not made out as provided by the statute of Georgia, so as to entitle the complainants to a preliminary restraining order against the cutting of the timber on the lots described in the bill, and no allegation is made of the insolvency of this defendant, or of the other defendants so as to entitle the complainants to the harsh remedy of injunction.

10th. Because the said bill is not verified as is required in cases of bills seeking remedy by injunction.

HILL, HARRIS & BIRCH,
MATT J. PEARSALL,
Solicitors for Defendant.

UNITED STATES OF AMERICA,
Southern District of Georgia, Western Division:

Before the undersigned personally came H. T. Crawford, who being duly sworn deposes and says that the foregoing demurrer is not filed for delay.

H. T. CRAWFORD.

Sworn to and subscribed before me this 9 day of May, 1899.

[SEAL.]

J. H. L. GERDINE,
Not. Pub. & Ex. Off. J. P. Bibb Co., Ga.

45 The undersigned counsel for H. T. Crawford do certify that in our opinion the foregoing demurrer is well founded in law. This 9th day of May, 1899.

WALTER B. HILL.
MATT J. PEARSALL.

(Indorsement:) No. 481. United States Court, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al., vs.* H. T. Crawford *et al.* Demurrer of H. T. Crawford. Filed May 11, 1899. Cecil Morgan, Deputy Clerk. Hill, Harris & Birch, solicitors for Crawford.

Demurrer of W. W. Ashburn.

In the Circuit Court of the United States for the Western Division of Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Separate Demurrer of W. W. Ashburn, Defendant.

And now comes W. W. Ashburn, one of the defendants in the above stated bill, and demurs thereto as part of his answer in said bill why injunction should not be continued *pendente lite*, upon the following grounds, to-wit:

1. He submits that said bill is fatally defective for want of proper parties defendant in this, that the bill is one charging a fraudulent deed from A. T. McIntyre, Jr., of the firm of McIntyre and Watson, to this defendant, with notice of such fraudulent conveyance on the part of this defendant, yet neither the said A. T. McIntyre, Jr., or his administrator, S. L. Hayes, nor the firm of McIntyre & McIntyre, and McIntyre & Watson, or either of them, are made parties defendant to this proceeding.

2. He submits that said bill is fatally defective for want of proper parties plaintiff, in that said plaintiffs, who have no uniformity of title, are made parties plaintiff, nor hold similar titles to all of the lots involved, and shows upon its face that the title to lot 353
46 is in three of the complainants, whereas the title to the other lots is in only two of the complainants therein named.

3. That various and separate parties defendant are united when no connection is shown each with the other, and various and separate controversies between complainants and the several defendants having no interest or concern with this defendant are united in one and the same bill.

4. That the deed in said bill set forth claimed by the defendant, as a cloud upon claimants' title, does not in fact or in law constitute a cloud upon the title of complainants, and does not show that complainants are entitled to have said deed delivered up to be cancelled.

5. That said bill is multifarious in this, that it unites various defendants who have no connection with each other, and unites various separate controversies between the complainants and the several defendants which have no connection with each other, and this defendant is shown to have no interest or concern with the several trespasses and alleged wrongs in said bill against his co-defendants.

6. That there is no equity in said bill, and the remedy at law is ample and complete.

7. He submits that the abstract of title attached to said bill is not made out as provided by the statute of Georgia, so as to entitle the

complainants to a preliminary restraining order against this defendant; and no allegation of insolvency is made against this defendant, or, in fact, as against either of the defendants named in said bill, so as to entitle the complainants to the harsh remedy of injunction.

8. That said bill is totally defective for the purposes of this demurrer, in its allegations and in the verification, in this, that there is no sufficient affirmance of irreparable injury, and the statement of facts supporting it, and the material facts on which the injunction is sought, are not positively sworn to.

M. J. PEARSALL,
Respondent's Solicitor.

UNITED STATES OF AMERICA,
Southern District of Georgia:

47 Before the undersigned personally came W. W. Ashburn, who being duly sworn deposes and says that the foregoing demurrer is not filed for delay.

W. W. ASHBURN.

Sworn to and subscribed before me this 10 day of May, 1899.
[SEAL U. S. COURT.] CECIL MORGAN,
Deputy Clerk.

I, the undersigned, counsel for W. W. Ashburn, do certify that in my opinion the foregoing demurrer is well founded in law.
This 10th day of May, 1899.

M. J. PEARSALL,
Respondent's Solicitor.

(Indorsement:) No. 481. U. S. Circuit Court. Western Division of the Southern District of Georgia. Jennie L. Graves *et al.*, *vs.* H. T. Crawford, *et al.* Demurrer of W. W. Ashburn. Filed May 11, 1899. Cecil Morgan, Deputy Clerk. Matt J. Pearsall, Def't's Solicitor.

Injunction Order to Certain Defendants.

In U. S. Circuit Court, Eastern Division, Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.,
vs.
H. T. CRAWFORD ET AL.

Upon hearing the rule issued against the defendants in above stated cause to show cause why they should not be enjoined *pendente lite*, as prayed in said bill, it is ordered by the Court:

1. That John W. Hightower and the Union Lumber Company, lessees under W. W. Ashburn, be enjoined *pendente lite* from cut-

ting timber or boxing trees on lot 353 in the 8th District of Colquitt County until he or they have first given bond, with good security, to be approved by the Court, and for such amount as may be fixed by the Court, conditioned that a summary judgment may be entered in this cause on same for any amount the Court may decree in this cause to the complainants by reason of such cutting or boxing of trees.

2. That no restraining order is granted as to said H. T.
48 Crawford as to lots 383 and south half of lot 353 in the 8th District of said County at this time, but with leave to complainants to submit proof as to his insolvency, and should it hereafter appear that he is insolvent, that the Court will consider the question of his giving bond on the same conditions and terms as above stated in regard to Hightower and the Union Lumber Company. As to lot 354 in the 8th District of said County, to which said H. T. Crawford disclaims title, he now promising in open Court not to interfere in any way with said lot or trees thereon, injunction order is withheld for the present.

3. The said Wm. McMullin is enjoined *pendente lite* from selling or causing to be sold lot 354 in the 8th District of said County under the judgment entered up by him on the attachment proceedings mentioned in complainants' bill, or otherwise prosecuting said judgment against any of the said lands claimed by complainants.

4. All deeds and other evidences of title offered by any of the parties are directed to be left with the clerk until the further order of the Court for inspection of the parties and their counsel in the further progress of the case.

EMORY SPEER, *Judge.*

May 12th, 1899.

(Indorsement:) In U. S. Circuit Court, Eastern Division, Southern District of Georgia. No. 481. Jennie L. Graves, *et al., vs.* H. T. Crawford, *et al.* Injunction order as to certain defendants. May 12, 1899. Filed May 12, 1899. Cecil Morgan, Deputy Clerk.

Equity Precept for Appearance.

United States Fifth Circuit Court, Southern District of Georgia.

JENNIE L. GRAVES, IDA J. GRAVES, and MINNIE C. GRAVES, Complainants,

[*vs.*]

H. T. CRAWFORD, WILLIAM MCMULLIN, JOHN MCMULLIN, W. W. ASHBURN, J. H. HIGHTOWER.

The clerk of the Court will please enter my appearance as
49 solicitor for the defendants, H. T. Crawford, Wm. McMullin, John McMullin, W. W. Ashburn and J. H. Hightower, in the above entitled cause.

Dated ——, 189-.

MATT J. PEARSALL,
Solicitor for Defendant.

Equity Order for Appearance.

United States Fifth Circuit Court, Southern District of Georgia. In Equity.

JENNIE L. GRAVES, IDA J. GRAVES, and MINNIE C. GRAVES, Complainant-,
and
H. T. CRAWFORD, WILLIAM MCMULLIN, JOHN MCMULLIN, W. W. ASHBURN, J. H. HIGHTOWER, Defendants.

On filing precept in this cause, and on motion of Matt J. Pearsall, solicitor for H. T. Crawford, Wm. McMullin, John McMullin, W. W. Ashburn, J. H. Hightower,

Ordered, that his appearance of solicitor for defendants herein be, and the same is hereby entered, and that the cause be now docketed for said defendants.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this seventeenth day of May, A. D. 1899.

[SEAL U. S. CIRCUIT COURT.] H. H. KING, *Clerk.*

(Indorsement:) No. 481. U. S. Fifth Circuit Court, Southern District of Georgia. Jennie L. Graves, Ida J. Graves and Minnie C. Graves, complainant-, and H. T. Crawford, *et al.*, defendant-. In Equity. Precept for appearance and order thereon. Filed and entered this 17th day of May, 1899. H. H. King, Clerk. Matt J. Pearsall, solicitor for defendant-.

50 *Amendment Making New Parties.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, &c.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Amendment.

And now comes your orators, Jennie L. Graves, Ida J. Graves and Minnie C. Graves, and amend their bill as follows:

1. Orators say that G. W. McCormick, a citizen of the State of Kentucky, and a resident of the town of Frenchburg, Kentucky, and A. T. McIntyre, Sr., a citizen of the State of Georgia and resident of the County of Thomas, in said Division and District, and Samuel L. Hayes, administrator of the estate of A. T. McIntyre, Jr., deceased, who is a citizen of the State of Georgia, resident in said County of Thomas, are all proper parties to these proceedings.

2. That on or about December 31, 1898, the said H. T. Crawford executed and delivered to the said G. W. McCormick a deed purporting to convey lot number 383, in the 8th District of Colquitt County aforesaid, reserving to himself the turpentine and timber privileges on said lot, which deed has been recorded on the records of the Clerk's Office of the Superior Court of said County of Colquitt, and which deed constitutes a cloud upon the title of your orators.

3. To the end that your orators may have the cancellation of all the deeds mentioned in your orators' bill and amended bill constituting a cloud upon your orators' title, as aforesaid, and such other and further relief as the nature of the case may require, your orators pray that the said G. W. McCormick, A. T. McIntyre, Sr., and the said Samuel L. Hayes administrator of the estate of A. T. McIntyre, Jr., deceased, may be made parties defendant to said bill, and that subpœnas may be issued directing them to be and appear at a day therein to be named to answer to your orators'
51 complaint, but not under oath, answer under oath from each and all of said defendants being hereby expressly waived.

MARION ERWIN AND
M. P. CALLOWAY,
Orators' Solicitors.

Amendment allowed this 10 day of June, 1899.

EMORY SPEER,
U. S. Judge.

(Indorsement:) In U. S. Circuit Court, Eastern Division, Southern District of Georgia. No. 481. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* In Equity. Bill, etc. Amendment making new parties. Filed June 10, 1899. L. M. Erwin, Deputy Clerk. Subpœnas issued.

* * * * * * *

Answer of G. W. McCormick.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.,
vs.
H. T. CRAWFORD ET AL.

Answer.

And now comes G. W. McCormick, made defendant to the above stated cause, and for answer to said bill, or so much thereof as is material to the case of this defendant, says:

He has no knowledge of the matters and things set forth in said bill other than this, that this defendant admits that H. T. Craw-

ford did convey to him by deed executed on or about December 31, 1898, lot of land number 383, in the 8th District of Colquitt County, Georgia, reserving to himself, however, the turpentine and timber privileges of said lot. This defendant purchased the same in good faith from said H. T. Crawford for a valuable consideration, and now calls upon the said H. T. Crawford, who is a party to this cause, and warrantor of the title thereto, to defend the title of this respondent.

G. W. McCORMICK.

(Indorsement:) In U. S. Circuit Court, Eastern Division,
52 Southern District of Georgia. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* In Equity. Bill, etc. Answer of G. W. McCormick. Filed 19th day of June, 1899. L. M. Erwin, Deputy Clerk.

Demurrer of Wm. McMullin.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

Bill in Equity.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Separate Demurrer of Wm. McMullin, Defendant.

Now, at this first term of Court since service of said bill, and before plea pleaded or answer made, comes William McMullen, one of the defendants in the above stated bill, by protestation, not confessing or acknowledging all or any part of the matters or things mentioned to be true in such manner and form as the same are thereby set forth and alleged, doth demur thereto upon the following grounds to-wit:

1st. Because there is no equity in said bill, and that complainants' remedy at law is ample and complete.

2nd. And for further cause of demurrer this defendant showeth, that it does not appear upon the face of said bill that the amount involved as against this defendant exceeds the amount of $2,000, exclusive of interest and cost; nor does it appear in reference to the amount involved against this defendant that this Court hath jurisdiction required by statute, but that it affirmatively appears that the Court is without jurisdiction.

3rd. And for further cause of demurrer this defendant showeth that said bill is multifarious in this, to-wit: That it unites various defendants who have no connection with each other, and unites various separate controversies between the complainants and the several defendants which have no connection with each other, and this defendant is shown to have no interest or concern with the

several alleged trespasses and wrongs against his co-defendants.

53 4th. And for further cause of demurrer this defendant showeth that the allegations in said bill as to the deeds therein assailed as a cloud upon complainants' title, does not in fact or in law constitute a cloud upon complainants' title, and does not show that complainants are entitled to have said deeds delivered up to be cancelled.

5th. And for further cause of demurrer this defendant showeth, that these same complainants have in the Superior Court of Colquitt County an equitable petition pending against this defendant involving the legality of the attachment proceeding as involved in this bill, and an injunction *pendente lite* involving the same subject matter is pending against him, which said Superior Court of Colquitt County is a Court of competent jurisdiction, and the processes of which these same complainants voluntarily invoked against him before applying to this Honorable Court.

6th. And for further cause of demurrer this defendant showeth, that the attachment in said bill assailed is not shown to be illegal, or that complainants had a good defense to same and failure to make such defense was not due to their fault or negligence, but due to fault of this defendant.

7th. And for further cause of demurrer this defendant showeth, that said bill is defective in its allegations and in its verification, in this, that there is no sufficient averments of irreparable injury or other equity and statement of facts supporting the same; and the material facts on which relief is sought are not positively verified.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant doth *demurrer* [demur] to the said bill, and prays the judgment of this Honorable Court whether he shall be compelled to make any other answer thereto, and he humbly prays to be hence discharged with his reasonable cost in this behalf sustained.

UNITED STATES OF AMERICA,
Southern District of Georgia,
Eastern Division, Colquitt County:

Before the undersigned officer came William McMullen, who being duly sworn deposes and says that the foregoing demurrer is not filed for delay.

WM. McMULLIN.

54 Sworn to and subscribed before me this June 26, 1899.

[Seal of the Superior Court.]

G. G. HENDERSEN,
Clerk Superior Court, C. C.

The undersigned, counsel for William McMullen, does hereby certify that in my opinion the foregoing demurrer is well founded in law. This June 26, 1899.

MATT J. PEARSALL,
Att'y for Deft.

Moultrie, Ga.

(Indorsement:) #481. In U. S. Circuit Court, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* Demurrer of Wm. McMullen, defendant. Filed June 29, 1899. S. F. B. Gillespie, Deputy Clerk. Matt J. Pearsall, defendant's attorney.

Demurrer of W. W. Ashburn.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

Bill in Equity.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Separate Demurrer of W. W. Ashburn, Defendant.

Now at this first term and before plea pleaded or answer made, comes W. W. Ashburn, one of the defendants in the above stated bill, by protestation, not confessing or acknowledging all or any part of the matters or things mentioned to be true in such manner and form as the same are thereby set forth and alleged, doth demur thereto upon the following grounds, to-wit:

1st. Because there is no equity in said bill; that the complainants' remedy at law is ample and complete.

2nd. And for further cause of demurrer this defendant showeth that it does not appear upon the face of said bill that the amount involved as to this defendant exceeds the amount of $2,000, exclusive of interest and cost, nor does it otherwise appear in reference to the amount involved against the defendant that this Court hath the jurisdiction required by statute.

3rd. And for further cause of demurrer this defendant showeth, that said bill is multifarious in this, to-wit: that it unites various defendants who have no connection with each other, and unites various separate controversies between the complainants and the several defendants which have no connection with each other, and this defendant is shown to have no interest or concern with the several alleged trespasses and wrongs against his co-defendants.

4th. And for further cause of demurrer this defendant showeth, that the allegations in said bill as to the deeds therein assailed as a cloud upon complainants' title, does not in fact or in law constitute

a cloud upon complainants' title, and does not show that complainants are entitled to have said deeds delivered up to be cancelled.

5th. And for further cause of demurrer this defendant showeth, that the complainants in the bill do not hold a similar title to all of the lots involved therein, but aver that the title to lot number three hundred and fifty-three (353) is in all three complainants, whereas the title to the other lots is in only two of complainants named.

6th. And for further cause of demurrer this defendant showeth, that the abstract of title attached to said bill is not made out as provided by statute of Georgia, so as to entitle the complainants to ask for injunction against the cutting of timber on the lots described in the bill, and no allegation of insolvency is made against this defendant, or of the other defendants to entitle complainants to harsh remedy of injunction.

7th. And for further cause of demurrer this defendant showeth, that the complainants have been guilty of such laches and delayed for such an unreasonable length of time in asserting their claim, if any they have, that a Court of Equity cannot give the relief asked against this defendant.

8th. And for further cause of demurrer this defendant showeth, that said bill is defective in its allegations and its verification, in this, that there is no sufficient averments of irreparable injury or other equity, and statement of facts supporting the same;
56 and the material facts on which the relief is sought are not positively verified as required.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant doth demurrer to the said bill and prays the judgment of this Honorable Court whether he shall be compelled to make any other answer thereto, and he humbly prays to be hence discharged with his reasonable cost in this behalf sustained.

UNITED STATES OF AMERICA,
Southern District of Georgia,
Eastern Division, Colquitt County:

Before the undersigned officer, came W. W. Ashburn, who being duly sworn deposes and says that the foregoing demurrer is not filed for delay.

W. W. ASHBURN.

Sworn to and subscribed before me this June 26, 1899.
[SEAL.] Z. H. CLARK,
N. P., C. C.

The undersigned, counsel for W. W. Ashburn, do certify that in my opinion the foregoing demurrer is well founded in law.
This June 26, 1899.

MATT J. PEARSALL.

(Indorsement:) No. 481. In U. S. Circuit Court, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford *et al.* Demurrer of W. W. Ashburn, Defendant. Filed June 29th, 1899. S. F. B. Gillespie, Deputy Clerk. Matt J. Pearsall, Defendant's Attorney.

Demurrer of H. T. Crawford.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

Bill in Equity.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Separate Demurrer of H. T. Crawford, Defendant.

57 Now at this first term of the Court since service and before plea pleaded or answer made, comes H. T. Crawford, one of the defendants in the above stated bill; by protestation, not confessing or acknowledging all or any part of the matters or things mentioned to be true in such manner and form as the same are thereby set forth and alleged, and doth demur thereto upon the following grounds:

1. Because there is no equity in said bill; that the complainants' remedy at law is ample and complete.

2. And for further cause of demurrer this defendant showeth, that it doth not appear upon the face of said bill that the amount involved as to this defendant exceeds the amount of $2,000, exclusive of interest and cost, nor does it otherwise appear in reference to the amount involved against this defendant that this Court hath jurisdiction as required by law.

3. And for further cause of demurrer this defendant showeth, that said bill is multifarious in this, to-wit: That it unites various defendants who have no connection with each other, and unites various separate and distinct controversies between the complainants and the several defendants which have no connection with each other, and that this defendant has no interest or concern with the several trespasses and wrongs alleged in said bill against his co-defendants.

4. And for further cause of demurrer this defendant showeth, that the allegations in said bill as to the deeds therein assailed do not show that the same constitutes a cloud upon the title of the complainants, and do not show that the complainants are entitled to have the same delivered up to be cancelled.

5. And for further cause of demurrer this defendant showeth, that the complainants in the bill do not hold a similar title to all of the lots involved therein, but avers that the title to lot number

three hundred and fifty-three (353) is in the three complainants, whereas the title to the other lots is in only two of the complainants named.

6. And for further cause of demurrer this defendant showeth, that the abstract of title attached to said bill is not made out as provided by the statute of Georgia so as to entitle the complainants to ask for injunction against the cutting of timber on the lots described in the bill, and no allegation of insolvency is made
58 as against this defendant, or of the other defendants, to entitle complainants to harsh remedy of injunction.

7. And for further cause of demurrer this defendant showeth, that the complainants have been guilty of such laches, and delayed for such an unreasonable length of time in asserting their claim, if any they have, that a Court of Equity cannot give the relief asked.

8. And for further cause of demurrer this defendant showeth, that said bill is defective in its allegations and its verifications, in this, that there is no sufficient averments of irreparable injury or other equity, and statement of facts supporting the same and the material facts on which the relief is sought are not positively verified as required by law.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant doth demurrer to the said bill and pray the judgment of this Honorable Court whether he shall be compelled to make any other answer thereto; and he humbly prays to be hence discharged with his reasonable cost in this behalf sustained.

UNITED STATES OF AMERICA,
Southern District of Georgia,
Eastern Division, Colquitt County:

Before the undersigned officer, came H. T. Crawford, who being duly sworn, deposes and says that the foregoing demurrer is not filed for delay.

H. T. CRAWFORD.

Sworn to and subscribed before me this June 27, 1899.
[SEAL.] Z. H. CLARK,
N. P., C. C.

The undersigned counsel for H. T. Crawford do cert-fy that in my opinion the foregoing demurrer is well founded in law.
This June 27, 1899.

MATT J. PEARSALL.

(Indorsement:) No. 481. In U. S. Circuit Court, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al., vs.* H. T. Crawford, *et al.* Demurrer of H. T. Crawford, defendant. Filed June 29, 1899. S. F. B. Gillespie, Deputy Clerk. Matt J. Pearsall.

59 *Demurrer of John McMullen, Deft.*

Bill in Equity.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Separate Demurrer of John McMullen, Def't.

Now comes, at this the first rule day since service and before plea pleaded or answer made, John McMullen, one of the defendants in the above stated bill, by protestation not confessing or acknowledging all or any part of the matters or things mentioned to be true in such manner and form as the same are thereby set forth and alleged, doth demur thereto upon the following grounds, to-wit:

1. Because there is no equity in said bill, and complainants' remedy at law is ample and complete.

2. And for further cause of demurrer this defendant showeth, that it does not appear upon the face of said bill that the amount involved as to this defendant exceeds the amount of $2,000, exclusive of interest and cost, nor does it otherwise appear in reference to the amount involved against this defendant that this Court hath the jurisdiction required y statute.

3. And for further cause of demurrer this defendant showeth, that the complainants have been guilty of such laches and delayed for such an unreasonable length of time in asserting their claim, if any they have, that a Court of Equity will not give the relief asked against the defendant.

4. Wherefore, and for divers other good reasons and causes of demurrer appearing in said bill this defendant doth demurr to the said bill and prays the judgment of this Honorable Court whether he should be compelled to make other answer thereto; and he humbly prays to be hence discharged with his reasonable cost in this behalf sustained.

UNITED STATES OF AMERICA,
Southern District of Georgia,
Eastern Division, Colquitt County:

60 Before the under-signed officer comes John McMullen who being duly sworn deposes and says that the foregoing demurrer is not filed for delay.

JOHN McMULLEN.

Sworn to and subscribed before me this June 30, 1899.

W. H. CHAPMAN,
N. P., C. C.

The undersigned counsel for John McMullen do certify that in my opinion the foregoing demurrer is well founded in law.

This June 30, 1899.

MATT J. PEARSALL.

(Indorsement:) In the Circuit Court of United States, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et. al., vs.* H. T. Crawford, *et al.* Demurrer of John McMullen, Defendant. Filed July 2, 1899. S. F. B. Gillespie, Deputy Clerk. Matt J. Pearsall, Defendant's Counsel.

Exceptions of A. T. McIntyre.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES, IDA J. GRAVES, and MINNIE C. GRAVES,
vs.
H. T. CRAWFORD ET AL.

Exceptions to Bill of Complainants in Foregoing Bill for Scandal and Impertinence.

Respondent excepts to the averments in the foregoing bill:

1st. Because the conduct of an attorney of this Court is criticised and charged with complicity in a fraud, when said bill does not seek any relief from respondent.

2nd. Because the dignity of the Court is brought in question by such charge or criticism, when the facts alleged are only upon information, and, as alleged, do not show that respondent was benefited by conspiracy or fraud, and only shows that he acted as an attorney in drafting the deeds and other papers connected with said trans-

61 action.

3rd. Because all the allegations and averments in said bill show that respondent had no interest in the transaction referred to, either directly or indirectly, and therefore the allegations in reference to the respondent are not pertinent to the case made against the other defendants against whom a decree is prayed.

Therefore, respondent prays that said bill may be purged, and scandalous or impertinent matter be expunged from the bill before going to record.

A. T. MACINTYRE,
In Propria Persona.

And now at this term of the Court come the defendants, A. T. MacIntyre and Samuel L. Hayes, administrator on the estate of A. T. MacIntyre, Jr., and demur to the bill in the above stated case, and for cause of demurrer say:

1st. That as to them there is no equity in the bill.

2nd. Because no decree or judgment is prayed for against them or either of them.

Of this they pray the judgment of the Court.

A. T. MacINTYRE,
For Self and as Solicitor for S. L. Hayes, Administrator.

Respondent answers: That Joel S. Graves came to this country, from the North, several years in advance of Eli Graves, and he was a Presbyterian minister, but did not confine himself to preaching, but merchandised and traded generally. In his mercantile business he was somewhat reckless. He located in Monticello, Fla., and carried on a mercantile business. Some time thereafter Eli Graves came, and still subsequently Cyrus S. Graves, with his father, Abram Graves, and his sister and brother-in-law, Mr. and Mrs. E. O. Thompson, came to this section.

Mr. Joel S. Graves being a resident of Florida, and his brother Eli being a resident of Georgia, Joel S. Graves furnished the money to Eli Graves to take out the plots and grants to the forty lots of land mentioned in the bill. Subsequently, when Mr. Joel S. Graves had disposed of his mercantile business in Florida, and determined
62 to move to Colquitt County, Georgia, he obtained a deed from Eli Graves to all of said lots denominated by the people here "The Block Deed."

Mr. Joel S. Graves, respondent says, was a failure as a business man. Eli Graves preached some. Abram Graves ran a little saw mill in Thomas County. Cyrus S. Graves, about the commencement of the war between the States, ran a mill at Homerville, Clinch County, Georgia. After the passage of the Conscript Law, he was carried to an Instruction Camp and it was but a short time before he died. After his death, Mrs. Jennie L. Graves took the two little girls from this section, went to the front where Gen. Jos. Johnson was commanding at or near Dalton, and, under a flag of truce, was sent to the Federal army to Gen. Sherman.

Respondent saw no more of her until after the war. In her absence the mill at Homerville, Clinch County, passed into the hands of other persons. After the war she came here with an attorney from the State of New York, investigated the matter, and, as respondent learned, brought suit in the United States Court and recovered the value of the mill.

Respondent does not remember having seen any more of Mrs. Graves until she came here, probably in 1889. Respondent gathered from the conversation with Mrs. Graves that Cyrus Graves and his father had some dealings and that Mr. E. O. Thompson, who administered upon the estate of his father-in-law, Abram Graves, claimed one of the lots of land sued for, and had sold it at administrator's sale and that Mr. Thompson acted as general agent in reference to her lands in Colquitt County, and that Mr. Wm. McMullen was looking after the lands for her up there through Mr. Thompson. If respondent remembers rightly, Mrs. Graves said she had been up to see about her lands, and that she met Mr. McMullen, who had been looking after her lands, and she proposed to pay him for his trouble. He declined to receive pay, stating that she had been very kind to

either him or his brother, respondent does not remember which, perhaps his brother, during the war. He had returned home sick, got off at Quitman, and she nursed him and sent him home, and he declined to take pay. She further stated that she finally prevailed upon him to accept five dollars as a present to his wife, and then Mr. McMullen said to her: "I will look after your lands. I am living right here at them and will keep trespassers off without charge."

At that time she made a deed to the two daughters, they being present, to all of the lots except the lot which Thompson had
63 sold, as respondent understood, abandoning all claim to that lot of land. She had only the deed from Joel S. Graves to Cyrus S. Graves to the six lots of land, and that was all the muniment of title she had, but being familiar with the business of the elder Graves, respondent was satisfied that her title was good.

A man by the name of Virgil Norman, under some pretended claim, had gone into possession of one of these lots. Respondent concluded to bring suit and take the chance to get hold of the missing deeds. A. T. MacIntyre, Jr., being younger, after said suit was brought against Norman, went to work to get up these missing papers. He procured a certified copy of the "Block Deed" on record in Thomas County, but was unable for a long time to find anybody who would swear that the original "Block Deed" was lost or destroyed, almost everybody believing that some of the Graves had it.

At the trial term of the Norman case, Mr. A. T. MacIntyre, Jr., the junior partner, with Mr. McMullen, compromised with Mr. Norman by letting him retain fifty acres in one corner of the lot of land, and paying the fees, fifty dollars, and took a compromise judgment in favor of the plaintiffs.

Some time subsequently Mr. McMullen reported to him that Mr. D. A. Autry was boxing for turpentine purposes another lot. Respondent filed a bill to enjoin him. The restraining order was to be heard in Thomasville. It was postponed one or more times and Mr. McMullen attended these different times set for the hearing and seemed to be as true and loyal to the Graves as a man could be.

On account of the absence of this "Block Deed," respondent passed, without any great trouble, the Autry case for about three courts, hunting for this "Block Deed." The junior finally located it in the possession of Mr. Spencer Graves, and he sued out a rule requiring him to produce the deed. After the service of the rule, Mr. Spencer Graves came here and delivered the deed to respondent, taking respondent's receipt to return it after litigation was over. Some time after that, and before the trial, Mr. McMullen brought four of the plats and grants. After this all the continuances in the case were made by the defendants. Respondent was then ready. Before he could get a trial, the junior member of respondent's firm went up to Colquitt County to superintend the sale of some lands that were to be sold at receiver's sale, as a representative of one of the creditors of Mr. Wilby, whose property had been in the hands of a re-
64 ceiver with directions to sell it all. It was advertised to be sold and he went there to attend that sale. On his return he informed your respondent that one of the lots advertised to be sold as

one of the Wilby lots was one of the Graves lots. He and Mr. McMullen consulted about it, and they thought the best way to protect Mrs. Graves' interest would be to let it be put up for sale, and if it went for less than it would cost to file a claim, to bid it in for Mrs. Graves. He said they both thought it and announced that it was the Graves property. The junior bid five dollars and the property was sold to him. It was thought best to take the title in his own name, and let people understand it was his, and probably that would prevent further trespassing on the land, and he said he gave the deed to Mr. Wm. McMullen and instructed him not to have it recorded, and when Mrs. Graves came to give her the deed upon her paying the expenses, and let her destroy it.

A. T. MacIntyre, Jr., died on the 11th day of July, 1897. The first court after his death, respondent went to Colquitt County, met Mr. William McMullen, and he stated the facts as stated by the junior, and offered respondent a paper which he said was the deed. Respondent did not look at the deed, but instructed him to keep it, and to do with it just as the junior had instructed him.

In the meantime, finding that it was difficult to get a trial there, respondent proposed to the counsel on the other side to withdraw the case from the jury and let the judges pass upon the law and facts in the case, to which they acceded, and it was to be tried in Thomasville before the judge, but we were unable ever to get a hearing here before the judge.

Some time in the latter part of 1898, Mr. Wm. McMullen came to your respondent and said that he and the junior had bought another lot or other lots of land besides the Graves lot, and that he was equally interested in it, although the junior furnished the money, and that he could get five hundred dollars for one of the lots and wanted Mr. Hayes, the administrator upon the estate of A. T. MacIntyre, Jr., to sell it and to divide the money, after paying the cost and interest. This, respondent thought, was right, and made application to the Court and got leave to sell it. Subsequently Mr. Wm. McMullen came down here, and said that the man would give fifteen hundred dollars for it if he could get a warranty, that he Wm. McMullen was not afraid to make a warranty, and that Mr. Hayes could not make one. Would respondent be willing for Mr. Hayes to take five hundred dollars cash and let him take the balance on time, and he would make the warranty. Having no confi-
65 dence in the Wilby title, respondent very readily consented, never dreaming that it was a Graves lot, having unlimited confidence in Mr. Wm. McMullen respondent being attorney for the administrator, gave the advice.

Respondent did not keep the numbers of the Graves lots in his head, indeed did not charge himself with attorneyship for this land until Mr. McMullen reported the trespassing upon the lots and he reported only two of them as being trespassed upon the Horne lot and the Autry lot.

On another occasion Mr. Wm. McMullen came back and said that he was then ready to consummate the trade and respondent thought the man, Crawford, here to do so. Night came on and time for re-

spondent to go home. Respondent invited him, Wm. McMullen, to go home with him. He got in the buggy, and as he got in, one of the little grandsons got in also. Respondent had not gone but a few steps before the little grandson asked respondent if he was not going to the depot to meet another little grandson who was to come that evening. Respondent turned and hurried to the depot and the trained stopped when respondent was about one hundred yards distant. Respondent drove up to the depot, jumped out and ran to hunt his little grandson. When he returned to the buggy, he, Wm. McMullen, was gone.

Some little time after that, his son, Mr. John McMullen, came in, with perhaps Mr. Crawford, and said that his father had allowed him to take his place, and that he would take the deed and make the warranty, and Mr. Crawford was willing to accept his warranty. Respondent could see no objection to that and wrote a deed from Mr. Hayes to John McMullen, and a deed from John McMullen to Mr. Crawford.

Respondent desires to state that the last time we met in Thomasville on the Autry injunction, Mr. McMullen met with us also, and stated about as Mrs. Graves had told respondent; that she had done him or his brother a great kindness and that he would not charge her anything for his services, and said that he came down here several times, had to pay his expenses, and lost a "heap" of time, and he thought he ought to have some pay. To which respondent replied that he thought so too, and to make out his bill, and if he approved it, he would recommend it being paid. Respondent thought no more of that bill until he saw in the paper a notice that one of the Graves lots of land was to be sold to pay an execution in favor of Mr. Wm. McMullen. Respondent immediately cut out the advertisement and wrote to the Graves, notifying them of this sale.

66 They seemed a little slow to give it attention and respondent telegraphed them to come, that it was absolutely necessary for one of them to be here. Just before the sale they came, all of them. They came at night and had but little time to attend to business and they got Messrs. Hansell & Merrill to file a bill enjoining Mr. McMullen's *fi. fa.*, and stopped the sale. Then they went up there and looked into their business, and on their return, notified respondent that a man by the name of Horne had leased the lot that had been recovered from Norman and that Mr. Crawford was boxing another one of their lots, and this is the first time that this respondent learned that Mr. Hayes had sold the Graves lot to John McMullen. Respondent was so confident that Mr. McMullen would take care of her interest that he did not look into the matter at all until John McMullen came, and when he came respondent got out the plots and grants, four of them, and looked on the back of them, and upon looking at them respondent took the number 383 to be 385, mistaking the dash between the lot number and the number of the district as making the three a five, and then respondent gave himself no more trouble about it. Neither of the plats and grants appeared to respondent as lot 383 and when the parties informed him of what had happened respondent got out these plots and grants

and they looked at them and examined them, and at first respondent understood them to say that one was a plot and grant to lot 385, but after careful examination by one of the girls, she determined it was 383. Upon opening and looking at the grant itself respondent found it in letter, 383. Respondent stated all these facts candidly to these parties. They did not seem to attach any blame to respondent, but employed him to file a bill against Horne and stop him from boxing their timber, which respondent did in conjunction with Messrs. Hansell & Merrill. They wanted respondent to go into the McMullen case. Respondent declined to go into it because he thought he might be called upon as a witness by her. Messrs. Hensell & Merrill conducted that case to its termination. They desired respondent to proceed against Crawford in that case, which he declined to do, as he felt that he would be compelled to be a witness. For weeks they came to respondent's office and asked him legal questions, and consulted him about legal matters, without ever complaining or insinuating that he had not done right. Finally one of the girls insinuated that respondent ought to pay the five hundred dollars which went into the estate of A. T. MacIntyre, Jr.

It was not long before the other girl made the same insinua-
67 tion. Respondent then said: "I have not given you satisfaction in the management of your business. Take these papers; I will not represent one who is not satisfied with my management." They at first declined to take them, but respondent insisted and gave the papers back to them. Some little time after that, the mother and one of the girls came in and, toward the end of the interview, the mother remarked that "You ought to pay that five hundred dollars, for it was a conspiracy between the junior and Mr. Wm. McMullen to cheat my children out of the lot of land." Respondent remarked to her that they were females, and he could not, by word or act, resent or defend their insults, and that if they could not come in his office without insulting him, not to come any more but they did come several times. They compromised with Horne, and respondent wrote the lease for them.

When Colquitt Superior Court came around, Mr. Marion Erwin came there and met one of the complainants in this case and the Autry case was dismissed. It was understood that it was dismissed there and would be brought in the United States Court. Soon after that Mr. Autry and they compromised, but in winding up the compromise they got into trouble and the counsel for Mr. Autry had the girls arrested. The mother appealed to respondent to get her children out of custody. Respondent did not hesitate a moment, for he could not stand by and allow these girls to go to jail. Respondent interposed and in a little while had them discharged, but in that settlement with Autry they got into a little trouble with one of the Autry counsel. Respondent advised them to arrange with him, that he would probably attach their lands, and that it would cost them more than his little fee. The next morning after they were discharged from custody they left, and in a short time afterwards respondent saw a notice of one of their lots to be sold in Moultrie, at the instance of this attorney for an attachment in his favor. Re-

spondent cut out the notice and sent it to them immediately. Respondent received, two or three days afterwards, a letter from one of the girls thanking him for that and all past favors.

Except the fifty dollars in the Norman case, years ago, respondent charged them not one cent for his services. Nothing in the Horne case, nothing in the Autry case, nothing for advice and counsel, and nothing for getting the discharge of the two girls from the custody of the sheriff. Respondent desires to say further that so far as the Watson & MacIntyre deed was concerned, he was not the MacIntyre in that firm, and knew nothing of the transaction. A. T.
68 MacIntyre, Jr., was the partner of Watson and that deed conveyed the lot which, respondent understood, the complainants in the bill had abandoned when the mother made the deed to the girls for the other lots, and this, respondent understands, to be the lot E. O. Thompson, as administrator upon the estate of Abram Graves sold at administrator's sale, and that Watson and MacIntyre bought that land from, or derived title from the purchaser at that sale.

Respondent knows that for himself he never did, and feels sure that A. T. MacIntyre, Jr., never dreamed of doing any wrong or injury to the complainants in the bill.

Respondent desires to say further that from the character of the bill, it might be inferred that Messrs. Ashburn and Hightower, two of the defendants to the bill, were engaged in a conspiracy to wrong complainants. Respondent is sure that neither one of these gentlemen ever sought, either directly or indirectly to injure the complainants in the bill.

The sands of life have about run out with your respondent. He has been practicing law over fifty-six years. This is the first time that ever a charge of fraud was aimed at him, either directly or indirectly, that came to his notice. He regrets it, but these complainants are females. He will not assail their character. He will not characterize their acts as he thinks they justly deserve to be characterized. He will not criminate or recriminate, charge or make any charges against the complainants, but leave the whole matter just where it stands.

Respondent, further answering, says that he never had Mr. Wm. McMullen to look after his Colquitt County land and feels sure that he would not tell plaintiffs that he had him, W. McMullen, looking after his land when such was not the fact.

Respondent further says that when complainants asked for the payment of the five hundred dollars which had gone into the estate of A. T. MacIntyre, Jr., respondent submitted to them the fact that he received nothing in the transaction and could not get anything back, but if they would take 1500 and make him a deed, he would take the land and pay fifteen hundred dollars, just what respondent was offering to take per lot for his Colquitt County lands. This offer was declined.

This statement of facts is submitted, not so much as a technical answer, but to make the truth appear, and to defend and to vindicate himself from the attack made upon his private and professional character by the allegations in said bill.

In conclusion, respondent says that the facts alleged in the
69 bill, so far as they are consistent with the facts stated in this answer, are admitted; so far as such facts are inconsistent with the facts stated in this answer, are denied.

Defendant and this respondent prays to be hence discharged with reasonable costs and as amended bill waives answer not under oath, no affidavit is appended as in duty bound, etc.

A. T. MACINTYRE.

Now comes S. L. Hayes, administrator of A. T. MacIntyre, Jr., and says for answer that he has no personal knowledge of any facts stated in original bill or amended bill, except the making the deed and receiving of the consideration, and as to all other matters alleged in said bill, for want of sufficient information, he cannot admit or deny the same.

S. L. HAYES,
Adm'r Est. A. T. MacIntyre, Jr.

(Indorsement:) No. 481. Exceptions, Etc. Circuit Court of the United States, for the Eastern Division of the Southern District of Georgia. Jennie L. Graves, Ida J. Graves, Minnie C. Graves, *vs.* H. T. Crawford, *et al.* In Equity, Bill, etc. Filed July 3, 1899. Cecil Morgan, Deputy Clerk.

Replication to Answers of Defendants.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES, IDA J. GRAVES
vs.
H. T. CRAWFORD ET AL.

Replication.

These repliants saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendants, G. W. McCormick, A. T. MacIntyre, Samuel
L. Hayes, administrator Estate of A. T. MacIntyre, Jr., and
70 John W. Hightower, for replication thereunto saith, that they doth and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants and that the answers of the said defendants are very uncertain, evasive and insufficient in law, to be replied unto by these repliants; without that that any other matter or thing in the said answers contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters

and things these repliants are ready to aver, maintain and prove as this Honorable Court shall direct and humbly prays as in and by their said bill they hath already prayed.

MARION ERWIN &
M. P. CALLOWAY,
Solicitors for Complainants.

(Indorsement:) In the Circuit Court for the Eastern Division of the Southern District of Georgia. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* In Equity, Bill etc. Replication. Filed December 28, 1899. L. M. Erwin, Deputy Clerk.

Bill of Revivor.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES, IDA J. GRAVES
vs.
H. T. CRAWFORD ET AL.

Bill of Revivor.

To the Honorable the Judges of the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia:

Jennie L. Graves, Ida J. Graves and Minnie C. Graves, of the County of Cortland, State of New York, and citizens and residents of the State of New York, bring this their bill of complaint against America Y. McIntyre, as executrix of the last will and testament of A. T. McIntyre, Sr., and thereupon your orators complain and say:

71 That heretofore, to-wit, on the 29th day of April, 1899, your orators filed a bill in equity in this Court against H. T. Crawford, William McMullin, John McMullin, W. W. Ashburn and John H. Hightower, and by amendment filed in this Court, G. W. McCormick, A. T. McIntyre, Sr., and Samuel L. Hayes, administrator of the estate of A. T. McIntyre, Jr., were made parties defendant. Said bill alleging among other things that your complainants herein had at the time of the filing of said bill, and had had for a great number of years prior to the matters complained of in said bill, a perfect title to certain lots of land in the 8th District of Colquitt County, Georgia, and known as lots numbers 345, 437, 353, 354, 383 and 384. That certain trespasses had been, and were being, committed on certain parts of said lands by certain of the defendants therein named. That some of said defendants were claiming title to certain portions of said lands, under and through certain conveyances made or caused to be made by the said A. T.

McIntyre, Sr., and by Samuel L. Hayes, administrator of A. T. McIntyre, Jr., which conveyances were charged to have been illegal and constitute a fraud and cloud upon your orators' title, and praying among other things that the said trespassers should be enjoined, and that the said conveyances so constituting a cloud upon your orators' title should be cancelled. That thereafter the said parties defendant, having been duly served by writ of subpœna, appeared by counsel and filed their several answers to said bill of complaint, to which answers replication was filed on the part of your orators. That thereafter the said A. T. McIntyre, Sr., died testate, naming his wife, America Y. McIntyre, executrix of his said last will and testament, which said last will and testament was duly admitted to probate in common form on April 7, 1900, in the Court of Ordinary of Thomas County, Georgia, and said America Y. McIntyre entered upon her duties as such executrix.

That your orators by virtue of the ownership of said land, have a right to have said bill of complaint revived as against said executrix of the last will and testament of A. T. McIntyre, Sr., and your orators charge that said case ought to be revived and stand in the same condition with respect to the parties in this bill of revivor as it was in respect to the parties to the said original bill, at the time of the death of the said A. T. McIntyre, Sr.

Wherefore, your orators waiving answer under oath, pray that the case may be revived by the decree of this Honorable Court, and that it may proceed to a decree in accordance with the prayers of the original bill of complaint herein.

72 Your orators further pray that a writ of subpœna may issue in due form of law, directed to the aforesaid defendant, America Y. McIntyre, as executrix of the last will and testament of the said A. T. McIntyre, Sr., and require her to appear and show cause, if any she has, why this cause should not be revived, and if no cause shall be shown by said defendant why said suit should not be revived, that a decree be entered reviving said suit in favor of your orators.

And your orators will ever pray, etc.

ERWIN & CALLOWAY,
Solicitors for Complainants.

MARION ERWIN, *Counsel.*

STATE OF NEW YORK,
County of Cortland:

Before the undersigned personally comes Minnie C. Graves, who being duly sworn deposes and says that she is one of the complainants in the foregoing bill of revivor. That she has read said bill and knows the contents thereof, and that the facts therein stated are true as she verily believes.

MINNIE C. GRAVES.

Sworn to and subscribed before me this 2nd day of June, 1900.

[SEAL OF NOTARY.] H. L. SMITH,
Notary Public.

(Indorsement:) In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia. Jennie L. Graves, *et al., vs.* H. T. Crawford, *et al.* In Equity, Bill, etc. Bill of Revivor *vs.* America Y. McIntyre. Filed June 8, 1900. Cecil Morgan, Deputy Clerk.

* * * * * * *

Order of Revivor.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Order of Revivor.

The complainants in the above stated cause having filed
73 their Bill of Revivor against America Y. McIntyre as executrix of the last will and testament of A. T. McIntyre, Sr., deceased, party to said cause, and subpœna having been issued upon said bill requiring the said America Y. McIntyre as executrix of A. T. McIntyre, Sr., deceased, to appear and show cause if any she has why the case should not be revived, and said subpœna having been duly served and no cause having been shown at the next Rules Day which had occurred after fourteen days from the time of the service of the said process of subpœna:

It is ordered that the said suit shall stand revived as to the said America Y. McIntyre, executrix of the said A. T. McIntyre, deceased.

MARION ERWIN,
Solicitor for Complainant-.

(Indorsement:) In the U. S. Circuit Court, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al. vs.* H. T. Crawford *et al.* Order of Revivor. Filed Sept. 8, 1900. S. F. B. Gillespie, Deputy Clerk.

Notice of Taking Testimony.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia. In Equity

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

To America Y. McIntyre, executrix Estate A. T. McIntyre, Sr., and to Samuel L. Hayes, administrator Estate A. T. McIntyre, Jr., and to Henry G. Turner, Esq., Solicitor, and to John W. Hightower, and to G. W. McCormick:

You and each of you will take notice that evidence in the above stated cause will be taken before N. J. Talley, one of the Examiners of the Court on September 20th, 1900, at 9 o'clock A. M. at Moultrie, Colquitt County, Georgia, and on the following day at Thomasville, Georgia.

Macon, Ga., September 10th, 1900.

ERWIN & CALLOWAY,
Solicitors for Complainants.

MARION ERWIN, *Counsel.*

74 I certify that *I have* on the 14th day of September, 1900, at Thomasville, Thomas County, Georgia, in my district, I personally served the within writ upon the within named Samuel L. Hayes, by exhibiting to him the original and leaving a copy of the same with him. I further certify that on the 14th day of September, 1900, at 2 miles west of Thomasville, Thomas County, Georgia, in my district, I served the within writ upon the within named Mrs. America Y. McIntyre by leaving a copy of same at her residence with her daughter, Mrs. C. D. McIntyre.

Dated Thomasville, Ga., this 14th day of Sept., 1900.

JOHN M. BARNES,
U. S. Marshal,
By F. D. DISMUKE, JR., *Deputy.*

(Indorsement:) In the Circuit Court of the U. S., for the Eastern Division of the Southern District of Georgia. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* Notice of taking of testimony. Original. Filed Sept. 10, 1900.

Agreement as to Taking Testimony.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia. In Equity.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

It is agreed that such competent evidence as either party may desire to take in the above stated case, may be taken before one of the Examiners of the Court at a hearing to be held at Moultrie, Ga., beginning September 20th, 1900, at such hour as the examiner may fix. The oral testimony to be taken stenographically and reported thereafter without the necessity of having the witnesses sign the depositions. This agreement is not intended to abridge the right of either party to take testimony by another method or at any other time or place which may be authorized by law or the practice in equity.

Sept. 10th, 1900.

MARION ERWIN,
Solicitor for Complainant-.
PEARSALL & SHIPP,
Solicitors for McMullen, Crawford, and Ashburn.

75 (Indorsed:) Agreement as to taking testimony. Filed Sept. 10th, 1900.

Order Overruling Demurrers.

In U. S. Circuit Court, Eastern Division, Southern District of Georgia.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

After argument of counsel for complainants and for defendants on the several demurrers filed in the above stated cause, it is adjudged, ordered and decreed that the said demurrers be overruled, an- that the defendants who have not answered the bill are given until the rules day in March, 1901, to file their answers to the bill.

In open court Jan. 24, 1901.

EMORY SPEER,
U. S. Judge.

(Indorsement:) Circuit Court of U. S., Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al., vs.* H. T. Crawford, *et al.* Order overruling demurrers and the defendants allowed to March Rules to answer. Filed Jan. 25, 1901. S. F. B. Gillespie, Deputy Clerk.

Answer of H. T. Crawford.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia. In Equity.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Answer of H. T. Crawford.

And now comes H. T. Crawford, one of the defendants named in the bill in the above stated cause, and making for himself a separate answer, answering says:

76 I.

Answer to Par. I to VII. For want of sufficient information, respondent can neither affirm or deny the paragraphs of the complainants' bill giving the history of their ancestors, and of their title and former residence, which is comprised in the paragraphs of said petition from one (1) to seven (7), inclusive, as this respondent became a citizen of Colquitt County only in the year 1890, having previously lived in Johnson and Dooly Counties. And whatever may have been known to other citizens of said county cannot be charged against this respondent, and in fact he had no notice of said matters as alleged in said paragraphs.

This respondent wholly denies that the complainants are the owners of the legal title to lot three hundred and eighty-three (383) and the south half of lot three hundred and fifty-three (353), in which land he is interested as hereinafter more fully set forth.

Respondent has no information as to the deeds upon which complainants rely, except that in or about the month of ——, 18—, respondent met the complainant, Jennie L. Graves, under the following circumstances: Respondent was introduced to her near Moultrie by Mr. Pidcock, the superintendent of the Georgia Northern Railway Co. Mr. Pidcock remarked to her in the presence of respondent that respondent had a title to one of the lots which she claimed, and that he knew respondent to be an honest man and that his title was taken and held in good faith. Mrs. Graves invited respondent to go to Moultrie where she herself was going, and in conversation, when respondent met her there, the said Mrs. Graves stated that Joel S. Graves had borrowed from her husband, Cyrus Graves, the sum of six thousand dollars, and after so doing had applied to her husband for an additional loan of one thousand dollars, and that her husband thereupon stated to said Joel S. Graves that before he could get any more money he must give security for what he had already borrowed; that thereupon the said Joel S. Graves did give as security to the said Cyrus Graves six lots of land in formerly Thomas County, and that these were the six lots set out in the bill.

II.

Answer to Par. 9 to 15. This respondent has no knowledge or information as to the averments embraced in paragraphs from nine to fifteen (9 to 15), inclusive, in reference to the relations
77 and transactions between A. T. MacIntyre, William McMullen and others therein referred to, and can neither affirm or deny the same. Nor is respondent advised or knows as to the averments in the sixteenth (16) paragraph as to what notice W. W. Ashburn had of complainants' claim of title to lot 353, or the connection of A. T. MacIntyre had with it.

III.

Answer to Par. 17 to 19. This respondent denies the 17th and 18th paragraphs, and specially and positively denies the charge in the 18th paragraph that in October, 1898, or any other time, an agreement was entered into between A. T. MacIntyre, Sr., William McMullen and John McMullen and this respondent, which agreement was kept secret from the complainants, whereby a conveyance of lot 383 was to be made from Samuel L. Hayes, Administrator of A. T. MacIntyre, Jr.'s, estate, at private sale to John McMullen for five hundred dollars, and that said John McMullen would immediately convey the same lot to this defendant for the sum of fifteen hundred dollars, or that this amount was largely below its value; and respondent further denies that at the time he took the deed from said John McMullen, he had notice that the title of said lot of land three hundred and eighty-three was in the complainants, and that said John McMullen had no right, title or interest in the same. On the contrary, respondent states that the true history of said transaction, so far as he is concerned, is as follows: Respondent was engaged in the manufacture of naval stores, and was operator in turpentine in Colquitt County, and doing a considerable business. Respondent was approached by John McMullen, who offered him the timber upon lot of land three hundred and eighty-three (383), stating that he was prepared to make good titles to the same. Respondent at that time had never met William McMullen, with whom he is alleged to have been in confederacy, and had never met at that time either A. T. MacIntyre, Sr., or A. T. MacIntyre, Jr. Respondent informed said John McMullen that he was willing to pay fifteen hundred dollars ($1500) for said lot, which respondent believed to be its full and fair value, if a good title could be obtained, and that the title papers would have to be submitted to Messrs. Hansell & Merrill, or to some other equally reputable and responsible attorneys; and that before he accepted the deed to this land, he had the original title papers submitted to Messrs. Hansell & Merrill, and
78 that thereupon said attorneys, after examining the title papers, gave respondent their written opinion of approval, which will to the Court be shown. Respondent avers that these gentlemen are counsel, learned in the law, and of high professional standing. Respondent submits that his action in this matter in the consultation of counsel shows that he was acting not only in good

faith, but with business care and caution, and that he obtained the advice of counsel, who subsequently represented these complainants in litigation in Colquitt Superior Court. The deed to said John McMullen was made by S. L. Hayes as Administrator of A. T. MacIntyre, Jr., who was then and is now President of the Thomasville National Bank, and a reputable gentleman, of business prudence and sagacity. The order for such sale had been passed by his Honor Augustine H. Hansell, Judge of the Superior Court of the Southern Circuit, and therefore no indication or circumstances whatever put respondent on notice of any wrong or improper conduct on the part of any one connected with the transaction.

Respondent further states that the said A. T. MacIntyre, Sr., was a man of great wealth, prominence and high standing in that section of the State; that he was an ex-member of Congress, a prominent member and officer in the Presbyterian church, a member of the board of trustees of the State University; that his son, A. T. MacIntyre, Jr., was a graduate of the same university and considered a lawyer of prominence and standing in that section of the State, and had dealt largely and extensively in lands in Colquitt County, in which possibly over a hundred thousand acres of land had passed through his management. Although respondent was comparatively a stranger to said section of the country, he knew the standing of these gentlemen above named, and it did not enter into his mind for one moment to suspect that there should be anything whatever sinister or improper about the transaction which resulted in respondent's purchase of this lot.

Respondent paid said John McMullen the sum of fifteen hundred dollars ($1500) cash, upon the execution and delivery of the deed to this lot, together with the full chain of title, and after they had been examined and approved by his attorneys, and he remembers that something was said about part of this purchase price being paid to S. L. Hayes, Administrator, but he does not know about the detail of this transaction, and therefore, can neither affirm or deny the allegations in the bill about them.

79 Respondent avers that the price, to-wit, fifteen hundred dollars, which he paid for this lot three hundred and eighty-three (383), was a full and fair price and all it was worth at that time.

IV.

Answer to Par. XIX. Respondent admits that he boxed the turpentine timber on lot 383, but avers that he did so under a good and sufficient legal title; he denies that he had any notice of complainant's claim of title, and denies that complainants have any title as against the title of this respondent.

V.

Answer to Par. XX. In answer to paragraph XX, which in substance alleges that this respondent, with full notice of complainants' title, entered upon the south half of lot three hundred and fifty-three (353) and three hundred and fifty-four, and cut the timber on parts

of the same, says: That the only other right, interest or title which this respondent claims to any of the lots mentioned in the bill (except lot 383) in his claim to the south half of lot three hundred and fifty-three (353). Respondent avers that he purchased this lot from D. M. Reaves at the time he purchased the turpentine business of said Reaves, and gave him for this south half of lot 353 the sum of six hundred and thirty-five ($635) dollars in cash; and respondent says that the value of said lot, with all improvements thereon, did not exceed the value of seven hundred dollars, and that most of this value is for improvements which have been made on there by himself and predecessors in title, which was made in the utmost of good faith, and under a *bona fide* claim of title. And that this respondent avers that he and those under whom he claims have been in the open, notorious, peaceable, exclusive, adverse and uninterrupted possession of this lot 353, under written evidence of title, and in good faith, more than seven years prior to the filing of complainants' bill.

Respondent avers that the true history of this lot 353 is as follows: That Cyrus Graves became indebted to his father, Abraham Graves, and in settlement of that debt, sold to said Abraham Graves this lot 353 and made and delivered his deed of conveyance to the same and after Abraham Graves' death this lot was sold by his administrator, E. O. Thompson, who was also his (Abraham Graves) son-in-law, and that these complainants had always recognized
80 that this lot had been sold by their ancestors in title, Cyrus Graves; and it was only a few weeks before the filing of this bill when they heard that the deed from Cyrus Graves to Abraham Graves had been lost or destroyed, that they made any claim to this lot 353; that they have always recognized that this lot had been sold to Abraham Graves; that the complainants have never returned this lot for taxation with the other lots which they claimed, and that very shortly before the filing of this bill, to-wit, on January 10, 1899, said complainants and each of them in an affidavit to be used in an equitable petition in Colquitt Superior Court, swore that the complainant, Jennie L. Graves, had no interest in any of the lands in Colquitt County; and in a conveyance made by the complainant, Jennie L. Graves, in the year 1889, in which she conveyed to her two daughters all of her lands in Colquitt County, she did not include this lot 353, as they thought then that this deed from Cyrus Graves was not lost, and it was only after these complainants heard that this deed had been lost or misplaced that they made any claim to this lot. Respondent avers, therefore, that these complainants have no title whatever to lots 353 or lot 383.

In further answer to this paragraph, respondent denies the allegation of the bill in paragraphs eight, seventeen and elsewhere as to the value of said lands inconsistent with the value herein stated, namely, fifteen hundred dollars for lot 383 and seven hundred dollars for lot 353, or the south half of this lot, without the timber on this south half which had been cut and used by respondent's predecessors in title before he purchased it.

Respondent denies that he has or ever has had any claim of right, title or interest in lots three hundred and forty-five (345), four hun-

dred and thirty-seven (437) and three hundred and fifty-four (354); and he has none in three hundred and eighty four (384), except that he worked some discarded boxes under D. A. Autrey, who is the owner of said timber, as appears from complainants' bill. Respondent denies that he has in any way trespassed on lot three hundred and fifty-four (354), or has any interest, claim or title thereto.

VI.

Answer to Par. XXI. Paragraph 21, which in substance alleges that "said trespassers," knowing that the complainants were defenseless, non-resident females, have advanced from one step to
81 another in wrongs and injuries, and have combined and confederated in said wrongs and injuries with the alleged agents and attorneys of complainants, respondent says: That if it is intended to charge this respondent as one of the trespassers therein referred to, and as having combined and confederated with complainants' agents and attorneys, or with any one else, this respondent specifically denies any such allegation or insinuation, and refers here to his answer hereinbefore made as to his connection with these lands claimed by these complainants.

VII.

Answer to Par. XXII to XXVI. Respondent has no knowledge or information as to the allegations in the bill from paragraphs 22 to 25 inclusive, relating to the controversies and differences between William McMullen and complainants or A. T. MacIntyre and complainants, and can, therefore, neither affirm or deny the same.

This respondent, having fully answered this bill, and affirming his utmost good faith at the time he purchased the title to lot 383 and south half of lot 353, and believing yet that his titles are honest, valid and sufficient, both in law and equity, and specifically denying any combination, confederacy, fraud or any impious conduct with complainants' agents, attorneys, or with any one else in any respect whatever, and having herein fully answered this bill, asks that he be relieved and go hence.

MATT J. PEARSALL,
DENMARK, ADAMS & FREEMAN,
Defendant's Solicitors.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia:

You, H. T. Crawford, do swear that what is embraced in the foregoing answer is true of your own knowledge, so far as it depends on your own act and deed; and so far as it depends on the act and deed of any other person, you believe the same to be true, so help you God.

H. T. CRAWFORD.

Sworn to and subscribed before me, in Colquitt County, on January 28th, 1901.

[SEAL.] G. G. HENDERSEN,
Deputy Clerk.

82 Indorsement: No. 481. In Circuit Court United States, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* In Equity. Answer of H. T. Crawford. Filed in clerk's office Feby. 7, 1901. H. H. King, Clerk. S. B. Adams, Matt J. Pearsall, defendant's solicitors.

Answer of W. W. Ashburn.

In the Circuit Court of the United States, Eastern Division, Southern District of Georgia.

Bill in Equity.

JENNIE L. GRAVES ET AL.

vs.

H. T. CRAWFORD ET AL.

Answer of W. W. Ashburn.

And now comes the defendant, W. W. Ashburn, one of the defendants named in the bill in the above stated bill in equity, and making for himself a separate answer, answering, says:

I.

In answer to paragraphs from one to seven (1 to 7), inclusive, which in substance gives the history of complainants' ancestors, and of their claim of title and former residence, this respondent can neither affirm or deny, for want of sufficient information. Respondent has never been a resident of Colquitt County, but for the past forty or fifty years has resided in Dodge and Fulton Counties, and therefore knows nothing of the averments made in these paragraphs in the bill, except that he denies that they are the owners of the north half of lot 353.

II.

In answer to the eighth (8th) paragraph, which in substance alleges the value of thes- lots 353, 354, 383 and 384, and that the chief value is the timber, this respondent says: That the timber on lands in Colquitt County is generally estimated at about one-third the value of the land, but he knows nothing definitely of the value of these lots or the timber, except lot three hundred and fifty-three, which
83 respondent says, at the time of the filing of this bill, was as follows: The land and timber on the north half was worth not exceeding seven hundred and fifty dollars ($750), and the land and improvements on the south half of this lot 353 was worth about seven hundred ($700) dollars. That the timber on the south half had, several years previous to the filing of this bill, been used by former owners of this part of the lot.

III.

Paragraphs from nine to fifteen (9 to 15), inclusive, which in substance relate to the transactions, contracts and employments of Wm. McMullen, McIntyre & McIntyre, with these complainants, and of complainants' suits at law with other parties, this respondent has no information whatever, and can neither affirm or deny these allegations. Not being a resident of the county, he had no means of knowing and no reason to know of these several matters as alleged in these paragraphs.

IV.

In answer to paragraph 16 of the bill, which in substance alleges that while A. T. McIntyre represented these complainants as attorney, and was in possession of their title deeds, that on November 5, 1890, the said McIntyre, as a member of the firm of McIntyre & Watson, undertook to convey to your respondent the north half of lot 353, and that this respondent accepted said conveyance with full notice that the title to said land was in the complainants, and that this respondent had leased the timber to Union Lumber Company, and that through other persons acting under this respondent, had boxed and taken the turpentine from other portions of this lot 353, this respondent says: That some time in November, 1890, he purchased from A. T. McIntyre, Jr., and A. M. Watson, some seventeen or eighteen thousand acres of land, part of this land being the north half of lot 353; respondent bought this land in the utmost good faith and for a full and fair consideration, and without any notice or grounds to suspect that the title was not a good, valid and legal one, and he believed then and now believes that his title is good, sufficient and valid. That before he purchased this land, the title papers were submitted for examination and approval to Hon. D. H. Pope, of Albany, a lawyer of ability and deserved reputation for his honesty and integrity, and that upon the approval of said gentleman and attorney, that the title to this land was in A. T. McIntyre, Jr.,
84 and A. M. Watson, he purchased it. That at that time A. T. McIntyre, Jr., was regarded in that section as an honorable, reputable gentleman and attorney of ability and good character, and was dealing extensively in lands at that time; and that A. M. Watson was a man of considerable means, and bore a high reputation for honesty and integrity, and there was no circumstance or conduct to lead respondent to suspect that there was an improper or sinister motive connected with the sale of this land.

The history of this lot, so far as respondent has been able to learn, may throw some light upon the claim of these complainants in reference thereto. That Abraham Graves was the father of Cyrus Graves, under whom these respondents claim, and that said Cyrus induced his father, Abraham, to move from Vermont or New York to Georgia, and promised that if he would make to him a title to all his property, that Cyrus would live with him and support him all his life; and that after Cyrus got a deed to his property, that he went off and left his father, and that when Abraham called on his son Cyrus to comply with his contract, that he made some compromise

settlement, and part of it was that he made to his father a deed to this lot 353, which was properly executed and delivered, and that after the death of said Abraham, that his administrator, who was his son-in-law, E. O. Thompson, sold this lot at administrator's sale to Dr. Bruce, who was then living in Thomasville, but who has since died. These complainants seemed to have recognized this lot as having been sold, for although they alleged to have been very prompt in payment of taxes, they have never at any time returned or paid taxes on this land, and very recently, in a proceeding in Colquitt Superior Court, it was testified to by each of these complainants that Mrs. Jennie L. Graves had no interest whatever in any of these lands. And respondent is informed that the history of their recent claim to it is that in looking over the records in Colquitt County, that they learned that this deed from Cyrus Graves to his father was not of record, and if so, the record had been burned, and that possibly the original deed had been lost, and all the witnesses had died, and after thirty-six years they made the first claim to this lot, and this is so, although it had been in adverse possession for a number of years.

Respondent says that neither of these complainants have any title to this lot 353, and that respondent and those under whom he claims have for more than seven years prior to the filing of this bill been in the continued, exclusive, uninterrupted, peaceable,
85 actual, adverse possession of this lot, accompanied by a claim of right, under written paper title, which said possession was in the right of the possessors and not in another, and did not originate in fraud.

In further answer, this respondent says that these complainants are not the owners of this lot, or any part of it, and that at the time of the conveyance from McIntyre & Watson, he had never heard of these complainants, and did not know that McIntyre & McIntyre was then or had ever represented them in any capacity, and had no way of knowing that they were claiming this lot, or rather, would ever try to claim it. Respondent denies any trespass to any other part of this lot. He admits that he has leased the saw mill timber on the north half to the Union Lumber Company, or to Heath & Hightower, who conveyed it to this latter company.

V.

In answer to paragraphs 17 to 25, inclusive, which relates to the differences, contracts, acts and doings of H. T. Crawford, Wm. McMullen, John McMullen, the McIntyres and these complainants, respondent has no knowledge or information and can neither affirm or deny the same.

Respondent has no claim, title [or] interest in any of the other lots mentioned and designated in the bill, and his only interest is in that of the land to the north half of lot 353, the value of which does not exceed five hundred dollars.

Respondent, having fully answered this bill, and affirming his utmost good faith in the purchase of the north half of lot 353, and averring that his title is honest, valid and sufficient, both in law and equity, and specifically denying any confederacy, fraud or improper

conduct or deed with complainants' agents, attorneys, or with any one in any respect whatever, and having fully answered this bill, asks to be relieved and go hence.

MATT J. PEARSALL,
Defendant's Solicitor.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia:

You, W. W. Ashburn, do swear that what is embraced in the foregoing answer is true of your own knowledge, so far as it de-
86 pends on your own act and deed, and so far as it depends on the act and deed of any other person, you believe the same to be true, so help you God.

W. W. ASHBURN.

Sworn to and subscribed before me this January 31, 1901.
[SEAL.] Z. H. CLARK,
N. P. C. C.

Indorsement: No. 481. In Circuit Court of United States, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* Bill in Equity. Answer of W. W. Ashburn. Filed in clerk's office, Feby. 12, 1901. H. H. King, Clerk. Matt J. Pearsall, Defendant's Solicitor.

Answer of John McMullen.

In the Circuit Court of the United States for the Eastern Division of Southern District of Georgia.

Bill in Equity.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Answer of John McMullen.

And now comes John McMullen, defendant in the bill in the cause above stated, and making for himself a separate answer, answering, says:

I.

In answer to paragraphs one to sixteen (1 to 16), inclusive, which in substance states the history of complainants' ancestors and their work in religious and industrial matters, and of complainants' manner of living, and of their difference with their attorneys, and the result of their litigation with other claimants to land claimed by them, respondent, for want of sufficient information, can neither affirm or deny, except that he denies that they are the owners of lot three hundred and eighty-three (383).

II.

87 The seventeenth (17th) paragraph, which in substance charges on information that lot 383, through some fraud, error or mistake, was sold at receiver's sale and bid in by A. T. McIntyre, Jr., in his own name, while he was representing complainants, and that this lot was worth $25,000, this respondent in answer thereto, says: That he is not advised as to the legality of this receiver's sale, but is informed and believes that the receiver's sale was regular and that this lot, 383, was in R. G. Willy, of Berrien County, and that by an order of the Superior Court of Berrien County, this lot was ordered to be sold, and that the receivers, by authority of that order, exposed this lot to public sale in accordance with law, and that it was bid in by A. T. McIntyre, Jr., and title taken in his name individually. At that time similar lots of land were selling for from five to twelve hundred dollars at private sale, under most advantageous circumstances, and at public sale rarely brought their full value; respondent denies that this lot at the time of the sale was worth $25,000, or at the time of the filing of this bill was worth that amount, but says that at the time of the receiver's sale it was worth about eight hundred dollars, and at the time of the sale to H. T. Crawford that fifteen hundred dollars was a very high price for it. Respondent was not present at this sale and does not know what happened, or the relation that said McIntyre bore to them, complainants.

III.

The eighteenth (18) paragraph, which in substance alleges that about October, 1898, an agreement was entered into between the A. T. McIntyre, Sr., William McMullen, H. T. Crawford and this respondent, which agreement was kept secret from these complainants, whereby a conveyance of lot 383 was to be made from Hayes, administrator, to this respondent, whom it is alleged had been looking after complainants' lands with his father, William McMullen, and that respondent would immediately convey this lot to said Crawford for the sum of fifteen hundred dollars, which was less than its worth, and that the estate of A. T. McIntyre, Jr., was to get five hundred dollars. In answer to this paragraph, respondent says: That it is not true that he entered into any such agreement or understanding as alleged; it is also untrue that respondent had been looking after complainants' land with his father or by himself; but on the contrary, he says that at the time he had never seen the complainants or either of them, and had never had any communications with or from them, directly or indirectly, and never 88 assumed in any respect to represent them in any respect whatever. As to William McMullen, respondent says that he does not live with his father, and has not in a number of years, but is a married man with family for 13 years, and has no connection with his father in his business; at the time of the sale of this lot, Crawford, William McMullen was not present, and so far as respondent is advised, knew nothing whatever about the sale, and so far as respondent knows, did not receive one cent, directly or indirectly, from this

sale, or any benefits in any way whatever, so far as this respondent knows or has reason to believe.

Respondent's connection with this lot was, that A. T. McIntyre, Jr., before his death, had engaged respondent to look after some lands in the county which he had sold to other parties, so as to protect his warranty, and to look after some lands which said McIntyre was claiming, and that he would give him a half interest in this lot 383, and that soon afterwards said McIntyre died; he had no written contract with said McIntyre, Jr., but went down to Thomasville and saw his father and administrator and advised them of this contract and asked them if they would not comply with it, and he was advised that if the estate could get at least five hundred dollars for a half interest, a deed would be made, and that respondent then approached Mr. Crawford, and said Crawford stated that if the titles were good that he would give fifteen hundred dollars for this lot, and that Crawford stated that the titles would have to be approved by some reputable attorneys, and suggested Hansell & Merrill, who was then representing Mr. Crawford in some litigation, and that they went to Thomasville and respondent got the chain of title and submitted them to Hansell & Merrill, and after they advised Mr. Crawford that the titles were good, he paid respondent the sum of fifteen hundred dollars by sight draft on Peacock & Hunt Naval Stores Company and the same was cashed, and respondent paid said Hayes the sum of five hundred dollars. This is respondent's entire connection with this matter, and his entire interest in it, or with any lands claimed by these respondents. He has no title, right, claim, interest in any of the other lands set out and named in the bill, and has never had anything to do with them except this lot 383.

Respondent is an illiterate man, can neither read nor write, but is honest, and he honestly thought that the title to this lot was in McIntyre, Jr., as above stated, and after Messrs. Hansell & Merrill advised him that the titles were genuine, that he had a right to sell it; if he did wrong, it was done ignorantly but in good faith;
89 but he is advised and believes that this title is the true title to this lot, and while it is true that the titles in which Joel S. Graves had anything to do with is not very favorably regarded, and that a very careful examination is generally made when one of these lots are bought, but when these attorneys, who had the original title papers before them, said that this title was the correct title, he felt safe in negotiating a sale and making a warranty title to the lot. It was all done fairly, openly and in good faith, and so far as he is advised or knows, there was no secret understanding, combining or any improper conduct on the part of any one connected with the sale. This is respondent's history of his only connection with any lands claimed or owned by these respondents and as set out in the bill, and he has no other connection with this proceeding.

IV.

In answer to paragraphs nineteen to twenty-five (19 to 25) inclusive, which relates and in substance refers to the attachment proceeding of William McMullen, respondent is informed that such a pro-

ceeding is pending, but is not fully advised as to the merits of the complainant's contention.

Respondent, in further answer to this bill, avers his honesty in the claim which he had to this lot 383, and specifically and positively denies any confederacy, combination or any improper conduct or action with the defendants named in the bill, or with any one else as against the rights and property of these complainants, and his only conduct in reference thereto was that he bought what he was advised was a good title to a lot which they claimed, and avers that he was under no legal or moral obligation not to do so, and he thought at the time, and believes now, that this title under which he sold this lot is one good both in law and in equity. Respondent, having answered said bill, asks to be relieved and go hence.

M. J. PEARSALL,
Solicitor for Defendant.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia:

You, John McMullen, do swear that what is contained in the foregoing answer is true of your own knowledge, so far as it depends on your own act and deed, and so far as it depends on the
90 act and deed of any other person, you believe the same to be true, so help you God.

JOHN his X mark McMULLEN.

Sworn to and subscribed before me, in Colquitt County, on January 30, 1901.

[SEAL.] H. A. RUSHING, *N. P.*

Indorsement: No. 481 In Circuit Court of United States, Eastern Division, Southern District of Georgia. Jennie L. Graves *et al., vs* H. T. Crawford *et al.* Bill in Equity. Answer of John McMullen. Filed in clerk's office, Feb. 14, 1901. H. H. King, Clerk.

Answer of William McMullen.

In the Circuit Court of the United States, Eastern Division, Southern District of Georgia.

Bill in Equity.

JENNIE L. GRAVES ET AL.,
vs.
H. T. CRAWFORD ET AL.

Answer of William McMullen.

And now comes the defendant, William McMullen, and for himself making a separate answer to the bill in equity in the above cause, and for answer says:

(Par. 1 to 8.) Paragraphs one to eight (1 to 8) inclusive, which in substance gives the history of complainants' family and of their prominence in the religious, educational and industrial works in the "wilderness," and a history of their claim of title to certain lots in Colquitt County, this respondent answers:

That he was acquainted with Eli and Joel S. Graves, and says that at times they performed some of the functions of ministers in the Presbyterian church; but he submits that if it is the intention and purpose of this allegation to establish, by the rights of inheritance and de-cent, traits of good character for honesty and fair dealing in these complainants, respondent suggests in this con-
91 nection that these same ancestors engaged in other modes of making a living which, [though] less honorable, was possibly more profitable, and it is this last mentioned trait of character, as subsequent allegations in this answer will set forth, seems to be more strongly marked in these complainants' life and conduct; respondent respectfully refers to Joel Graves' character and practice in avoiding the payment of his just debts, and it is this practice and characteristic respondent feels has been inherited by these complainants.

And to complete the historical setting in this bill, it might with propriety and relevancy be mentioned that next to Joel Graves' practice in shirking his honest debts, his next most promised habit and practice, and one for which his name is now mostly remembered, was his dealing in lands. It is a matter of current history in Thomas and Colquitt Counties, and more to be remembered *that* [than] his ministerial labor, is that what is known as "The Graves Title" is always regarded with distrust and insecurity by reason of Joel Graves' reputation for his questionable and disreputable dealing in lands, and principally by the sale of the same lands to several persons and collecting the money from each. And the most prominent legacy left by him is confusion, uncertainty and distrust about any title with which his name was connected, and it was possibly by reason of this heritage that respondent can attribute his connection with these complainants. They recognized, either from personal knowledge of their kinsman or from his reputation learned from others, that their title was not free from suspicion, and was uncertain, and that it would be necessary to have some person of influence near by to watch and protect it from adverse claimants, and that he was, therefore, employed. This, respondent submits, is a fairer and more perfect statement of the history of complainants' ancestors in title, in practice, in character and in blood.

Respondent further admits that Eli and Joel Graves built a brick church, but he has always understood that the money was donated by members of the Presbyterian church resident in the North. It is also true that the school house was built in a vast wilderness, both of said structures formerly pointed out as objects of local historical interest. Of equal historical importance and of equal irrelevance is the information as to the cooperage factory, which in local parlance bore the less pretensions title of "bucket shop."

92 Respondent's knowledge of complainant's title to the six lots mentioned in the bill is that he understood that Cyrus

Graves, the husband and father of these complainants, who owned these lots, was conscripted in the Confederate army, where he died, and he left these complainants as his heirs. That Cyrus Graves obtained his claim to them by reason of a loan he made to Joel Graves, and the deed to these six lots was made as security only, and as was the habit of said Joel not to pay any debt he contracted, he never paid this one, and the title was left in said Cyrus, by whatever effect this security deed may have had; respondent is not advised as to what legal procedure these complainants have taken to perfect their title under this security deed, but is informed that no action have been instituted, and that whatever claim of title they may have is under this security deed.

As to lot 353, which is set forth in the bill as property of all three of the complainants, respondent says that he never heard that they ever had any claim to this lot, but they had always recognized that this lot was sold by Cyrus during his lifetime to his father, Abraham Graves, and that on the death of Abraham, this lot was sold by E. O. Thompson, his administrator, to Dr. Bower. It is true that for the past twenty or twenty-five years it has been known as the Bruce and Bower lot, and has been settled and occupied by their tenants, and those to whom they sold, for some fifteen or twenty years. In representing these complainants, in giving and paying their taxes, he never assessed or paid taxes, or exercised any acts of ownership of this lot, and though this was all quite well known to complainants, not until this bill was filed did they ever make any claim to this lot. While respondent does not know why this claim is made at this late date, he is informed that these complainants, in examining the records and abstracts of title in Colquitt County, they learned that the Court House was burned several years ago, and the records destroyed, a id that the deed from Cyrus to his father, Abraham Graves, had been lost or destroyed, and there could be no evidence of its having been executed; then it was that they made this claim of ownership.

(Par. 8th.) Paragraph eight (8), which in substance avers that in year 1889 these complainants visited Thomasville for the purpose of examining the condition of their lands, and to arrange for the proper protection of same from adverse claimants, and for this purpose consulted with A. T. McIntyre, who advised them that
93 respondent be engaged for this purpose, respondent says in answer thereto that he can neither affirm or deny the same, but remembers that they visited the county about the date alleged.

(Par. 9th.) The ninth paragraph, which in substance describes the mode of conveyance from Thomasville to respondent's home, and that in a conversation with respondent it was developed that complainant, Jennie L. Graves, had rendered kind service to a brother of respondent while in distress during the war, and that respondent expressed himself as anxious to requite this service, and stated that he would look after these lands for the purpose of preventing trespasses or interference, and that they offered to pay him and he refused, but that they did persuade him to accept a small sum of money for his wife, respondent in answer thereto says:

It is true that complainants visited him at his home and, as they explained, for the purpose of engaging his services to try and look after and protect these lands, which they said they recognized was liable to be taken possession of by other claimants; that by reason of Joel Graves' connection with these lands that they were not at all safe, and that to have some resident of good character to try and protect them, notify them of adverse claimants, give them in for taxation, and to look after them generally in connection with McIntyre & McIntyre, whom they informed him would direct him about them. It is also true that complainants at the time represented that they had rendered some act of humanity to one of his brothers, a Confederate soldier, and certainly respondent was grateful, but scarcely did he expect then and more amazed is he now that these complainants, who are boasting of their righteousness even by the right of descent from ministers of the gospel and from philanthropist, and who have with evident pride plead in this bill the sacrifice of a husband and a father in the "Lost Cause," should now suggest an act of humanity and common benevolence to a poor Confederate soldier as full requite and discharge for all times for the services which he has rendered them, extending as it has over a period of twelve years and in the discharge of which it has often become necessary for him to neglect his farm and crop, provide his own mode of conveyance, pay his own expenses, contest with his neighbors and best friends about their claim of title to these lands. He has in addition to the other services done for them expended something
94 like seventy-five dollars of his money, which to a small farmer is quite an item, and for all of this he has never received one penny as compensation, and he submits in all fairness and justice that it was not contemplated that a simple act of common humanity should require from him as payment this work he has done and sacrifice he has made.

(Par. 12.) The twelfth paragraph, which in substance avers that after conferring with respondent the complainants returned to Thomasville and discussed the situation of their lands with A. T. McIntyre, Sr., and particularly in reference to contemplated employment of the law firm of McIntyre & McIntyre to bring suit against one Norman who was claiming one of their lots, 345, and that Jennie L. Graves executed and delivered a deed to her two daughters to five of the six lots, lot 353 not being conveyed, and that said McIntyre promised to look after their matters and pay taxes on the lands, respondent answers, that he can neither affirm -or deny this paragraph, but understands that the averments are true.

(Par. 13.) Paragraph thirteen, which in substance alleges that the complainants arranged to have the original plats and grants and block deed found and delivered through your respondent, in answer to the same says: That though complainants may have arranged to have these papers and muniments of title found and delivered and their title thereby perfected, but that for this service they have never paid one cent, not even the necessary expenses, and respondent firmly believes that they will never pay one penny until forced to do so by the process of some court. It is shown that in this connection

that in having these papers delivered that he did for these complainants a very valuable service, and in fact the foundation of this proceeding in this court is based upon his labor, his time, his own money expended and for which he has never received any compensation whatever.

(Par. 14.) In answer to the fourteenth paragraph which in substance alleges that thereafter complainants were in regular correspondence with said A. T. McIntyre and with your respondent in reference to these lands, he says: That it is true that he did confer often with these complainants, but he says that this correspondence was not intended as a social exchange of friendly greeting, as complainants would seem to regard it, but was pertaining to matters of business importance to complainants, and that in every detail was he careful with the interest of complainants, but not for the least of this service and labor has he been paid.

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(Par. 15.) The fifteenth paragraph which in substance alleges that your respondent in year 1893 notified complainants that D. A. Autrey had set up adverse claim to lot 384 and that soon after an injunction proceeding was instituted in Colquitt Superior Court, and that recently a settlement has been made with said Autrey; in answer to same respondent says.

That it is true that as soon as said Autrey set up his adverse claim to this lot that respondent very promptly notified complainants and also McIntyre and McIntyre, and that an injunction was sued out in Superior Court and said Autrey placed under bond, and that the case was referred to his Honor Aug. H. Hansell to pass upon the law and facts, which was to be heard at Thomasville. And in connection with this proceeding it was necessary for respondent to make three or four trips to Thomasville, and the actual expenses for each trip was not less than ten dollars, and yet notwithstanding this expenditure of money in the interest of these complainants and the loss of time from his work, that he has never received any compensation whatever, and this so, although said Autrey has long since settled with complainants and paid for the damages under some compromise settlement. It is further shown that in the defense of this lot he had to contest with Mr. Autrey, one of his neighbors and best friends, and who had often indulged him with credit for food and provision and in many ways had shown him consideration, and yet in representing the interest of these complainants he went to the extent of applying to Judge Hansell for an attachment for contempt for what he felt was a violation of the injunction order and would assist him in the suit against said Autrey and in favor of these complainants, and he did all in his power to protect the claim of these complainants, and for this or for any service has he ever been paid anything whatever.

(Par. 16.) In answer to the sixteenth paragraph, which in substance alleges that while A. T. McIntyre was representing complainants as attorney and with their title papers in his possession that he as a member of the firm of McIntyre and Watson undertook to convey to W. W. Ashburn the north half of lot 353, and that said Ashburn accepted said conveyance with notice

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of complainants' title, respondent answers: That of his own knowledge he does not know of the matters alleged in this paragraph, but understood that it was A. T. McIntyre, Jr., who conveyed this lot, and as hereinbefore set forth, has always understood that complainants made no claim to this lot until they discovered that the deeds and record of the other claimants had been destroyed; respondent does not know what notice said Ashburn had of their claim of title.

(Par. 17.) The seventeenth paragraph, which in substance charges that through some fraud, error or mistake that lot 383 was sold at receiver's sale in July, 1894, and that A. T. McIntyre, Jr., who was representing complainants, gave public notice that this lot belonged to them and that said McIntyre did then bid in said lot for $5.00 while it was worth much more, and stated that it was bid in for complainants, and that said McIntyre never informed them of such sale, respondent in answer thereto says: That he is not advised nor does he know of the alleged fraud, error or mistake by reason of which this lot was sold, but he remembers that sale was advertised as receiver's sale of party living in Berrien County, and that said McIntyre was in some way connected with the same as attorney for the receiver or some creditor and was present at the sale, and that respondent and said McIntyre discussed the advisability of bidding in the lot for the complainants and it was respondent's understanding that it was bid in for them, as there was some question about the title, and as to all of such matters he left it, of course to said McIntyre; that respondent himself is ignorant and would have to leave such matters of conveyance and rights of complainants to said McIntyre; but it was his understanding that this lot was bid in for said complainants, and did not know any different until long after the sale, and at the time of the sale to Mr. Crawford; respondent does not think that this lot at that time was worth $25,000, but that $1000- or $12,000 was a very high valuation for it.

(Par. 18.) The eighteenth paragraph, which in substance alleges that in October, 1898, an agreement was entered into between
97 A. T. McIntyre, John McMullen, H. T. Crawford, and your respondent, which agreement was kept secret from complainants, whereby a conveyance to lot 383 was to be made at private sale from Hayes, Administrator, to John McMullen for $500, and that John McMullen would convey to H. T. Crawford for $1500, and that both of said deeds and the order of sale for administrator was obtained and prepared by A. T. McIntyre, Sr., who was representing the administrator, and that said Crawford accepted said deed with notice of complainants' title, and that said John McMullen had with respondent been looking after these lands, in answer to this paragraph respondent says:

It is not true that he was a party to any such agreement, or did he know of any such agreement or understanding; that at the time of the alleged agreement he had never seen said Crawford but once, which was several months prior, and then spoke only a few words with him; that it is also untrue that John McMullen was or ever had been associated with respondent in looking after these lands; that said John McMullen is middle-aged man with large family and for

past fifteen years has been living at his own home, and in no way whatever connected with complainants' land or with respondent. Respondent specially denies the charge in this paragraph or in any others in this bill which says or intimates that he has combined or confederated with the co-defendants or with any one else, and that such charges are as dishonest as they are false, and respondent avers that these complainants knew they were false when made but for the sinister motive of assisting their claim against the title of said Crawford they make these false and dishonest charges against him.

(Pars. 19 and 20.) Paragraphs nineteen and twenty, which in substance alleges that H. T. Crawford, in December, 1898, commenced to box the trees on lot 383 and to use turpentine timber, and likewise to use timber on lots 353 and 354, respondent answers: That it is true that said Crawford has used the timber on lot 383, but has not entered on lot 354, and the timber on lot 353 was cut by D. M. Reaves quite a number of years ago.

(Par. 21.) Paragraph twenty-one, which in substance alleges that "said trespassers" knowing that complainants were defenseless females residing in a distant state have taken advantage of their absence and have advanced from step to step in their wrongs
98 and injury upon and about their lands, and that they have combined and confederated with the attorneys and agents of complainants, and that if not enjoined that irreparable damage will be done; respondent answers:

That if it is intended to refer to him as one of "said trespassers" that the same is untrue, and that complainants knew it was false when they so charged it; and if it is intended to refer to him as one of their agents with whom any one has combined and confederated, that this is also false and that complainants knew it was false and made the same wilfully. He says that he has not trespassed on any of complainants' lands or any claimed by them, that he has no interest directly or indirectly in any lands owned or claimed by them, nor has he combined or confederated with any one against them in any way whatever.

(Par. 22.) Paragraph twenty-two, which in substance alleges that while in regular correspondence with complainants and without having presented a bill of any charges on account of services, that on the 6th day of June, 1898, respondent sued out an attachment before the County Court of Colquitt County on grounds of non-residence and for an alleged indebtedness of $500 claimed to be due for alleged services rendered about these lands, and levied on lot 354, and that on November 14, 1898, a judgment was entered on said attachment, and which last mentioned date was the date of recording of the deed from Hayes, administrator, to John McMullen, in the Clerk's office and in the same building with the County Court, and that said alleged services for which said attachment was sued out was in part stated to be the looking after lot 383, and that said lot had been entrusted by complainants to respondent and his son John McMullen acting under him, in answer respondent says:

It is true as alleged that he sued out an attachment before the County Court on the grounds that complainants were non-residents

and the occasion was the failure of complainants to pay him for his services, and he would have been afraid to have presented any bill for that the complainants being non-residents could very easily have disposed of their property and made it necessary for him to sue them in New York and this would in all probability have defeated his just claim; he had however consulted with their representatives, McIntyre & McIntyre, about some compensation, and he was advised by said McIntyre that respondent would have to try and protect
99 himself; that said complainants had not paid him any fee, and at the time the complainants had not even paid their taxes and the sheriff was about to levy on the land for taxes, and knowing complainants as he did he did not feel safe in presenting any bill as he felt sure they would have undertaken some course to avoid its payment or certainly to greatly delay him, and it was this that caused respondent to act promptly and as he felt he was authorized. Respondent knows nothing of the date of the judgment corresponding with the date of the record of deed to lot 383, and if true, he was in no ways connected with the recording of the deed, and had he known it, could not have prevented it; and it is also true that part of the account was for services rendered in looking after this lot, but that this account was made out and suit entered several months prior to the execution of the deed from Hayes to McMullen and from McMullen to Crawford, and at the time of the execution of the deed and at the time of the suing out of the attachment he was not representing these complainants, but had prior to that time and on the February prior severed his connection with complainants and had not represented or attempted to represent them after February, 1898, and all this claim to this lot and their trouble with their other lands was after he had ceased to represent them, and the fact that after he severed his connection with them that they have had all the trouble with the several adverse claimants is strong evidence of the value of respondent's services to them.

(Par. 23.) The twenty-third paragraph, which in substance alleges that the levy of the attachment by respondent was great wrong and breach of the trust reposed in him and which he had assumed towards them, and that the entry of judgment thereon was also a fraud by reason of the confidential and trust relations; in answer respondent says:

It is admitted that there was a trust relation, but that it existed by reason of an obligation on the part of the complainants to pay him for his services, which they failed and refused to do, and which respondent believed then and now believes that they will never do unless wrung from them by the process of some court. He submits that this trust relation which they plead was dual in its nature, in that complainants owed to him an obligation binding and effective in law, in good morals and in decency and that was an obligation to pay him for his services, his time, and his money expended for them.

100 Respondent further submits and pleads that the resort to this Court was not necessary and that no great wrong and injury could have accrued to complainants, for that these same com-

plainants have in the Superior Court of Colquitt County an equitable petition pending against him involving the legality and regularity of this attachment proceeding as in this bill are involved and that there is pending against him an injunction *pendente lite* involving the same subject matter and between the same parties, and as this respondent has no claim, interest, right or demand against any of the land or property or rights of complainants, except as derived from this attachment proceeding, that no irreparable damage or wrong or injury can be occasioned these complainants.

(Par. 24.) In answer to the twenty-fourth paragraph, which in substance alleges that the services for which respondent made his charges were not rendered under any contract with complainants, and that instead of rendering the service charged for, that respondent was at and during a large portion of the time for which said services were charged actively engaged in defrauding complainants out of their land and timber, respondent says:

That this paragraph is not true, and that if these complainants were not females who plead their sex and use the processes of this Court as a license to villify and defame his character with false charges of fraud and crime, that he would be unable to answer and to properly characterize this paragraph except that it was a wilful and deliberate misstatement made for the purpose of personal gain to these complainants in their suit against the defendant, Crawford. Respondent says that he is now nearly seventy years old, and has lived all of his life within a few miles of his birthplace, except the four years of service in the Confederate army, and this is only time he was ever a party in any court, and is first time that any unkind criticism of his character and his conduct has been made: that he has so lived for three-score years and ten as to merit the good opinion of his neighbors and those who knew him best. And now as he appreciates that he is too sure a prey to an insidious, but fatal disease, and at best has but few more years, and conscious of this, he makes this serious solemn statement, that he has never received directly or indirectly one cent from these complainants, or from any one for them, or from any land or timber claimed by them, and that in the discharge of his duties towards them that he has
101 been faithful and honest as he knew how to be. And he can quite forget their ingratitude for his services and his money expended for them, and he can forget their moral weakness in their efforts to avoid the payment of his just claim, but he feels with considerable bitterness this charge of fraud and crime against him now in his old age and broken down by a fatal disease. He is sorely grieved that his first appearance in the courts of his country should be to defend his character at this age of life and from those whom he has done so much and for whose interest he has made so many willing sacrifices. He would surely have surrendered his claim for services to have avoided this humility, but when he sees the motive of bringing him into this litigation of aiding them in their suits with other parties he is astonished. He denies each and every allegation in this paragraph or elsewhere in the bill which charge him

with being a party to any confederation, conspiracy, with the co-defendants or with any one else, directly or indirectly, in any way whatever; and that he has never received directly or indirectly one penny of value from these complainants or from anything of theirs, and he has no interest, claim, right, demand or title directly or indirectly to any of the lands claimed by them, except whatever of interest he may have by virtue of his attachment proceeding, and he has never made any claim of title to any of the lands named in the bill, or made any effort to exercise any rights to the same except as their agent, and has never trespassed on them in any manner whatever, and in no sense or way has he any interest in these lands, but says that for his services which he has rendered to them that is still owing him as set forth in the attachment and declaration. But says that if this attachment proceeding was not regular that he is perfectly willing for the judgment to be opened and the merits of his claim to be investigated and his rights fully established.

And respondent having fully answered this bill asks that he be allowed to go hence.

M. J. PEARSALL,
Respondent's Attorney.

UNITED STATES OF AMERICA,
Eastern Division, Southern District of Georgia:

You William McMullen, do swear that what is contained in the foregoing answer is true of your own knowledge, so far as it
102 depends on your own act and deed, and so far as it depends on the act and deed of any other person you believe the same to be true, so help you God.

WM. McMULLEN.

Sworn to and subscribed before me in Colquitt County, on Jan. 31, 1901.

[SEAL.] H. A. RUSHING, *N. P.*

(Indorsement:) No. 481. In Circuit Court, United States, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* Bill in Equity. Answer of Wm. McMullen. Filed February 27th, 1901. H. H. King, Clerk. M. J. Pearsall, Defendant's Solicitor.

Replication to Answer of Defendants.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, &c.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Replication.

These repliants, saving and reserving to themselves all and all manner of advantage of exception, which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, H. T. Crawford, William McMullen, John McMullen and W. W. Ashburn, for replication thereunto saith, that they doth and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and insufficient in law, to be replied unto by these repliants; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver, maintain and prove as this Honorable
103 Court shall direct, and humbly prays as in and by their said bill they hath already prayed.

ERWIN AND CALLAWAY,
Solicitors for Complainants.

(Indorsement:) In the Circuit Court of the United States for the Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* Replication. Filed 1 o'clock P. M., March 9, 1901. L. M. Erwin, Deputy Clerk.

Order to Remove Testimony.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

It appearing to the Court that on the preliminary hearing in the above stated cause the complainants offered in evidence certain original and certified copies of grants and deeds and original letters and

copies of records, and that by order of Court the same was left of file with the clerk, and it further appearing that the complainants desire to have the depositions of the said Jennie L. Graves, Minnie C. Graves and Ida J. Graves, residents of the State of New York, taken *de bene esse* before some United States Commissioner or Notary Public in New York, after due notice, under the provisions of Section 863, Revised Statutes.

It is ordered by the Court, on motion of solicitors for complainants, that said solicitors have leave to withdraw the said evidence so offered by complainants for the purpose of having the same identified and referred to by the said witnesses before the magistrate taking said depositions *de bene esse*. Said solicitors shall give their receipt to the clerk of this court for the documents so taken out and be responsible for their production to the court.

The time for taking said depositions and other testimony for either side is extended for two months from this date.

October 10th, 1901.

EMORY SPEER,
U. S. Judge.

(Indorsement:) In the Circuit Court of the United States
104 for the Eastern Division, Southern District of Georgia. *In re* J. L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* In Equity. Order to remove testimony. Filed October 11, 1901. Cecil Morgan, Deputy Clerk. Erwin & Callaway, Sols.

Amendment to Bill.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES, IDA J. GRAVES,
vs.
H. T. CRAWFORD ET AL.

Amendment.

And now comes the complainants, Jennie L. Graves, Ida J. Graves, and Minnie C. Graves, and amend their bill by striking out in the second line of paragraph sixth of the bill the date "1863" and inserting therein in lieu thereof of date "1862," and by adding to the charges and averments of said paragraph of said bill the following:

That your orators aver and charge that while it is true that administration was taken out on the estate of the said Cyrus S. Graves, in the Court of Ordinary of Thomas County, Georgia, by your orator, Jennie L. Graves, as administrator, in the year 1862, that thereafter your orator, Jennie L. Graves, assented that the full title and possession of said lots of land Nos. 353, 354, 383, 384, 345 and 437, all in the Eighth District of Colquitt County, Georgia, of which the said

Cyrus S. Graves died seized and possessed, should pass fully to the said Jennie L. Graves, Ida J. Graves and Minnie C. Graves, as to the title, possession and ownership thereof, as heirs at law of the said Cyrus S. Graves, and your orator, Jennie L. Graves, as such administrator, fully assented to the bringing of this suit by complainants herein.

MARION ERWIN,
M. P. CALLAWAY,
Complainants' Solicitors.

SOUTHERN DISTRICT OF GEORGIA,
Eastern Division, ss:

Jennie L. Graves, Ida J. Graves and Minnie C. Graves, being duly sworn, each for herself, deposes and says, that they
105 are the complainants in the above stated cause, and that the foregoing amendment is not made for the purpose of vexation or delay, and that the matter of the foregoing amendment is material and could not, with reasonable diligence, have been sooner introduced into the bill.

JENNIE L. GRAVES.
IDA J. GRAVES.
MINNIE C. GRAVES.

Sworn to and subscribed before me this 30th day of March, 1904.
S. F. B. GILLESPIE,
Deputy Clerk, U. S. C. Ct.
S. F. B. GILLESPIE,
Deputy Clerk.

SOUTHERN DISTRICT OF GEORGIA,
Eastern Division:

Before me the undersigned comes Marion Erwin, solicitor for complainants in the above stated cause, who, being duly sworn, deposes and says that through the want of knowledge of the facts on this point, by deponent, and by the solicitors for defendants in the above stated cause, an agreement was entered into in this case between counsel for the above parties, as reported by examiner on page 375 of examiner's report of the testimony, as follows: "It is agreed between counsel of record for the respective parties in this case that there was no administration taken out on the estate of said Cyrus S. Graves, husband of Jennie L. Graves."

That after the said agreement was made, a copy of said record was furnished the said Jennie L. Graves, who was then in New York, and the said Jennie L. Graves called the attention of deponent to the fact that this was a mistake. That deponent and Mr. Pearsall, principal counsel for defendant, H. D. Crawford, *et al.*, shortly thereafter had some correspondence and conversation relative to the matter, and that Mr. Pearsall stated that he desired to be relieved from the agreement, by reason of the fact that the above parties had entered into it through inadvertence, and that he would desire at the hearing to offer an extract from the returns of Jennie L. Graves, as ad-

ministrator, in Thomes County, in the case. This deponent notified said Pearsall that deponent desired also to offer an extract from the record in regard to the returns and inventory of administrator, Abram Graves, in Thomas County, and that deponent would amend the bill alleging the fact of the taking out of administration
106 on Cyrus Graves' estate by Jennie L. Graves, as administrator, and as to her consent that the title and possession of the lands should be vested in the heirs of Cyrus S. Graves, and her assent to the suit. An understanding was reached between deponent and Mr. Pearsall that these matters should be done, without objection by either party, at the time counsel met for a hearing at Savannah, that the bill should be amended, and that complainants' counsel would release defendants' counsel from agreement entered, on page 375 of the record. Deponent further says, that when counsel met in Savannah, Mr. Pearsall was taken ill, and it was agreed that the cause should be taken up before the Judge in any part of the district where he should be, and Mr. Pearsall left for home. He was killed in an accident shortly thereafter, as deponent is informed, and for that reason deponent has not presented the foregoing amendment until this time, when the case is brought up, and counsel are again present.

MARION ERWIN.

Sworn to and subscribed before me this 30 day of March, 1904.
S. F. B. GILLESPIE,
Deputy Clerk, U. S. C. Ct.

The foregoing amendment is allowed.
March 30, 1904.

EMORY SPEER,
U. S. Judge.

(Indorsement:) In the Circuit Court of the United States, Eastern Division, Southern District of Georgia. Jennie L. Graves, Ida J. Graves, Minnie C. Graves *vs.* H. T. Crawford, *et al.* Amendment to bill. Filed March 30, 1904. S. F. B. Gillespie, Deputy Clerk.

Amendment to Answer of H. T. Crawford.

In the United States Circuit Court for the Eas[illegible] Division of the Southern District of Georgia. In [illegible]ty.

JENNIE L. GRAVES ET AL., Complainants,
vs.
H. T. CRAWFORD ET AL., Defendants.

And now comes the above named defendant, H. T. Crawford, by his attorneys at law, and shows to the Court that the adminis-
107 trator of the estate of the late A. T. McIntyre, Jr., is a necessary party defendant and should be made a party defendant in the above stated cause. That heretofore, to-wit, at the inter-

locutory hearing, upon the suggestion of the Court, A. T. McIntyre, Sr., and the administrator of the estate of A. T. McIntyre, Jr., were made parties defendant, and on the 10th day of June, 1899, a petition was presented to the Court setting forth that both the said A. T. McIntyre, Sr., and Samuel L. Hayes, as administrator of the estate of A. T. McIntyre, Jr., were proper parties, and praying that they be made parties; that this amendment was allowed; that they were made parties and both of them filed answers. Defendant further shows that, since the making of the said Hayes, administrator, a party, he has departed this life and he has been succeeded in the administration by M. A. Fleetwood, a citizen and resident of Thomas County, Georgia, who is now the administrator of the estate of the said A. T. McIntyre, Jr.

Defendant further shows, as to lot 383, that complainants, if they are entitled to recover, ought, in equity and good conscience, to recover against the estate of the said A. T. McIntyre, Sr., and of A. T. McIntyre, Jr., under the allegation made by the complainants in their bill and the theory of their case. It appears by the said bill and the evidence that the said A. T. McIntyre, Jr., purchased lot 383 at a receiver's sale in his own name; that, after his death, this lot was sold, under order of the Judge of the Superior Court, by his administrator, the said Hayes; was bought in by John McMullen, one of the defendants, and afterwards conveyed to this defendant for fifteen hundred dollars. According to the bill the law firm of McIntyre & McIntyre, composed of the said A. T. McIntyre, Sr., and the said A. T. McIntyre, Jr., were the attorneys at law and agents of the complainants during all of this time, charged not only with the ordinary duties of lawyers, but also with the duty of looking after and protecting this property, and these sales were made by them, and the deeds to John McMullen and to this defendant were drawn by A. T. McIntyre, Sr. If what the bill states be true, then the complainants ought not to be allowed to recover against the defendant, and, if they have any claim for the alleged frauds and wrongs done them, it ought to be asserted and maintained against their said attorneys, this defendant being a *bona fide* purchaser for value without notice, and not being in any wise in collusion with the said attorneys or either of them.

ADAMS & ADAMS,
Attorneys for Defendant, H. T. Crawford.

108 GEORGIA, *Chatham County:*

Personally came H. T. Crawford, who, on oath, deposes and says that the allegations of fact in the foregoing amendment to his answer are true. Deponent also says that, at the time of filing the original answer in the said cause, deponent did not omit the facts and the defense set out in this amendment to his answer for the purpose of delay, and that the amendment is not now offered for delay.

H. T. CRAWFORD.

Sworn to and subscribed before me this 30th day of March, 1904.

W. B. STUBBS,
Notary Public, Chatham County, Georgia.

The foregoing amendment was on yesterday presented and disallowed. Exceptions by defendant are allowed and subjejct to such disallowance by the Court the proposed amendment may be filed with the record.

EMORY SPEER, *Judge.*

(Indorsement:) In the U. S. Circuit Court for the Eastern Division of the Southern District of Georgia. Jennie L. Graves, *et al.*, complainants, *vs.* H. T. Crawford, *et al.*, defendants. In Equity. Amendment to answer by the defendant, H. T. Crawford, and order. S. F. B. Gillespie, Deputy Clerk. March 30, 1904. Adams & Adams, Attorneys at Law, Savannah, Georgia.

Order Denying Amendment.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Order as to Amendment Proposed to Answer of H. T. Crawford.

No reason being shown by the defendant, H. T. Crawford, why the matters set up in his proposed amended answer, now presented, were not brought to the attention of the Court at an earlier stage of the proceedings, and it appearing to the Court that M. A. Fleetwood administrator *de bonis non* of the estate of A. T. McIntyre,
109 Jr., is not an indispensable party to the cause, leave to amend said answer is denied.

In open Court, March 30, 1904.

EMORY SPEER,
U. S. Judge.

(Indorsement:) Circuit Court of U. S., Eastern Division, Southern District of Georgia. J. L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* Order denying amendment to answer of H. T. Crawford. Filed March 31, 1904. S. F. B. Gillespie, Deputy Clerk.

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Death of S. L. Hayes Suggested.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Death of Samuel L. Hayes, Administrator, Suggested.

The death of Samuel L. Hayes, administrator of the estate of Thomas McIntyre, Jr., being now suggested of record.

It is ordered by the Court that the complainants have leave to proceed in said cause as to the other defendants.

In open Court, March 30, 1904.

EMORY SPEER,
U. S. Judge.

(Indorsement:) Circuit Court of United States, Eastern Division, Southern District of Georgia. J. L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.* Death of S. L. Hayes, administrator, T. McIntyre, Jr., suggested and order thereon. Filed March 31, 1904. S. F. B. Gillespie, Deputy Clerk.

110 *Final Decree.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Final Decree.

The above stated cause came on to be heard upon the pleadings and proofs, and was argued by solicitors for complainants and solicitors for defendants; whereupon, it is considered, adjudged, ordered and decreed as follows:

(1) That the complainants have a complete remedy at law as to the case made by the evidence in support of the bill as against H. T. Crawford, and the bill is dismissed as to the said H. T. Crawford, with costs against complainants, for want of equitable cognizance, without prejudice to the right of the complainants, if any they have, to recover said lot of land No. 383 in the 8th District of Colquitt

County, Georgia, and the south half of lot No. 353 in said 8th District of Colquitt County, Georgia, and the value of the turpentine and timber claimed to have been taken therefrom, by appropriate action at law. The title to said lot 383 and the south half of lot 353 not being passed on herein.

(2) That the complainants have a perfect legal title to lots 354, 384 and north half of lot 353, and are entitled to the relief prayed in reference thereto as to each and all of said other defendants to the bill, and all persons claiming under them since the filing of the bill, as therein prayed.

(3) That the claim of the defendant, William McMullen, for alleged services to the complainants set up in the attachment suit instituted by him on June 6, 1898, in the County Court of Colquitt County, Georgia, against the complainants herein, is without merit, and he forfeited whatever claim he may have had, if any he had, for services as agent of the complainants, by reason of his negligent and fraudulent conduct in connection with said agency.

And that said William McMullen, and all persons claiming under him since the filing of the bill, be and they are hereby perpetually enjoined from enforcing or attempting to enforce judgment in said attachment suit obtained by him in said County Court of Colquitt County, Georgia, against the said complainants, or execution thereon, or the attachment levied under said proceedings on lot 354 in the 8th District of Colquitt County, Georgia, and the said judgment is decreed to be null and void and is decreed to be cancelled as a cloud upon complainants' title.

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(4) That the said defendants, W. W. Ashburn, John W. Hightower and the Union Lumber Company, and all persons claiming under them, or either of them, since the filing of the bill, be and each of them are, hereby perpetually enjoined from in any manner selling, leasing, disposing of, or trespassing upon lots of land numbers 354, 384 and the north half of lot 353 in the 8th District of Colquitt County, Georgia, or interfering with the timber or turpentine remaining thereon by cutting, boxing, leasing, selling or otherwise disposing of the same.

(5) And it appearing to the Court that prior to the filing of the bill the said W. W. Ashburn caused to be cut and boxed the timber on the north half of 353, being on 269 acres, and took or caused to be taken and carried away the turpentine therefrom, of the value of $2.75 per acre, amounting to $739.75, it is adjudged and decreed that the said complainants do have and recover from the said W. W. Ashburn the said sum of $739.75 for the value of said turpentine so taken, and that complainants may have execution for the same..

(6) And it appearing to the Court that since the filing of the bill, and while the bill was pending against W. W. Ashburn, John W. Hightower and the Union Lumber Company, the timber on the north half of lot 353, being 269 acres of timber of the value of $4.00 per acre, amounting to $1,076, was cut and carried away under the lease of the said W. W. Ashburn to said J. W. Hightower and Union Lumber Company, and by authority of the said J. W. Hightower and the Union Lumber Company, although said W. W. Ashburn

and said J. W. Hightower and the Union Lumber Company were prohibited by the restraining order of this Court from so doing. It is adjudged and decreed that the said complainants do further have and recover of the said W. W. Ashburn, J. W. Hightower and the Union Lumber Company the sum of $1,076, for the value of said timber so cut, taken and carried away, and the complain-
112 ants may have execution for the same, to be levied jointly or severally.

(7) The lease of the timber privileges on the north half of lot 353, made by W. W. Ashburn to John W. Hightower and the Union Lumber Company, so far as relates to the north half of lot 353, is hereby decreed to be cancelled as a cloud upon complainants' title.

(8) The cost of Court, including witness fees and the fees and expenses of J. N. Talley, examiner, to be taxed by the clerk, are hereby declared to be a lien on lots of land numbers 354, 384 and the north half of lot 353 until paid, but as between the parties to the suit one-third of said costs and examiner's fees and expenses are awarded against the complainants as representing the share of said costs incurred in connection with the conflicting claims of complainants and H. T. Crawford to lot 383 and the south half of lot 353, the balance of said costs and examiner's fees and expenses are awarded one-fourth against William McMullen, one-fourth against W. W. Ashburn, and two-fourths against J. W. Hightower and the Union Lumber Company, and the officers of the Court may have execution for the costs and examiner's fees and expenses due them under the terms of this decree against the said parties against whom the same is awarded, and against the complainants and the said lots of land 354, 384 and the north half of lot 353, and if the complainants shall pay all of said costs and expenses, the complainants shall be entitled to have execution against the said defendants respectively for the amount of said costs and examiner's fees awarded against the defendants above named as above awarded.

In open Court, this 13th day of March, 1905.

EMORY SPEER,
U. S. Judge.

(Indorsement:) In the U. S. Circuit Court, Southern District of Georgia. In the matter of J. L. Graves, *et al., vs.* H. T. Crawford, *et al.* In Equity. Final decree. Filed March 13, 1905. S. F. B. Gillespie, Deputy Clerk.

113 *Testimony Taken by J. N. Talley, Examiner.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
HENRY T. CRAWFORD ET AL.

IDA J. GRAVES ET AL.
vs.
JAMES HOLMES ET AL.

I do hereby certify that the writing annexed to this certificate, pages numbered 2 to 238, inclusive, is a true and correct transcript of the testimony stenographically taken by me as examiner in the above stated causes.

This November 5, 1901.

J. N. TALLEY,
Examiner U. S. C. Ct.

Filed Nov. 7, 1901.

CECIL MORGAN,
Deputy Clerk.

List of Exhibits.

Map or plat prepared by C. L. Austin	No.	1
Fi. fa. Wright, Betts & Co. *vs.* J. S. Graves		2
Deed, Joel S. Graves to Cyrus Graves		3
Deed, Eli Graves to Joel S. Graves		4
Certificate of Hansell & Merrill as to title		5
Deed, Joel S. Graves to Jas. Read		6
Deed, James Read to J. A. Shewmake		7
Deed, Jos. A. Shewmake to M. Hobbs		8
Deed, J. A. Shewmake to I. M. Wilkes		9
Deed, I. M. Wilkes to R. G. Wilby		10
Deed, Marshall Hobbs to R. G. Wilby		11
Deed, J. Z. Elliott, receiver, to A. T. McIntyre		12
Saml. Hayes, Adm., to John McMullen		13
Deed, John McMulen to H. T. Crawford		14
Affidavit of Jennie L. Graves		15
Affidavit of Ida J. and Minnie C. Graves		16
Certified copy of attachment suit		17
Deed, D. M. Reaves to H. T. Crawford		18
Deed, D. A. Autrey to D. M. Reaves		19
114 Deed, C. H. Autrey to D. A. Autrey		20
Deed, M. M. Blanton to C. H. Autrey		21
Deed, B. S. Bower to M. M. Blanton		22
Deed, B. B. Daniel to A. M. Watson		23

Deed, A. T. McIntyre, Jr. and A. M. Watson to W. W. Ashburn 24
Letter dated March 27, 1894, and envelope 25
Letter dated August 20, 1895, and envelope 26
Letter dated April 13, 1895, and envelope 27
Letter dated February 27, 1897 28
Letter dated July 31, 1897 29
Letter dated September 11, 1897 30

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115 In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

In Equiy. Bill, etc.

IDA J. GRAVES ET AL.
vs.
JAMES HOLMES ET AL.

To the Honorable the Judges of Said Court:

The report of J. N. Talley, examiner, respectfully shows, that in pursuance of an agreement of counsel, and upon notice to the parties

or their solicitors, as will appear from the record, the above stated causes were called at the Courthouse at Moultrie, Georgia, September 20, 1900, at 11 o'clock A. M., for the purpose of taking testimony. The following appearances were noted: Mr. Marion Erwin and Mr. Merrel P. Callaway, solicitors for the complainants in both causes; Mr. Matt J. Pearsall, for H. T. Crawford and other respondents represented by him; Mr. J. A. Wilkes and Mr. Pope S. Hill, solicitors for James Holmes and other respondents; Mr. W. C. Snodgrass for Samuel L. Hayes, administrator; Mr. Charles P. Hansell, for America Y. MacIntyre, executor, etc. The testimony taken at said time and place appears herein from pages 2 to 74, inclusive.

On September 21 and 22, 1900, the examiner took the testimony of certain witnesses at Thomasville, Georgia. Said testimony appearing herein from page 75 to 180, inclusive. At said hearings the same solicitors were present.

On September 22, 1900, at Moultrie, Ga., other testimony was taken by the examiner. This testimony appears from page- 181 to 238, inclusive, herein. At this hearing the same solicitors were present, except Mr. Pope S. Hill and Mr. J. A. Wilkes.

The examiner further reports that at the time of taking testimony counsel announced that the testimony of the following witnesses would be used in both causes: Crosby L. Austin, Matthew Tucker, John F. Pidcock, C. W. Pidcock, A. D. Patterson, Wm. E. Johnson, G. A. Horkans. It was stated that the testimony of Elijah McCranie and Wm. McMullen would be used in the case *vs.* H. T. Crawford *et al.*, only, and that the testimony of J. B. Norman, Jr., would be used in the case *vs.* Crawford *et al.*, and that his testimony through the first cross examination would be used in the case *vs.* James Holmes. The testimony of J. F. Cooper and James Holmes applies to the case *vs.* Crawford *et al.* In regard to the testimony of A. H. Hansell and J. W. Groover, taken in the case *vs.* James Holmes *et al.*, Mr. Erwin states: "All their testimony except testimony relative to the *fi. fa.* is to go in the H. T. Crawford record."

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Respectfully submitted,

Z. N. TALLEY, *Examiner.*

Macon, Ga., Nov. 5, 1901.

C. L. AUSTIN, direct.

CROSBY L. AUSTIN, called for the complainants, duly sworn, testified:

(Examined by Mr. ERWIN:)

Q. Where do you reside? A. In Moultrie, Georgia.

Q. Colquitt County? A. Yes, sir.

Q. How long have you resided in Colquitt County? A. About four years, near four years.

Q. What is your business, Mr. Austin? A. Well, I am bridge inspector for the county at present. Superintend the bridging of the county.

Q. Are you a surveyor? A. Yes, sir.

Q. You are familiar with the location of the lands about Moultrie? A. Some I am.

Q. Are you a regular civil engineer? A. No, sir; I am not a regular civil engineer.

Q. Just a surveyor? A. Just a surveyor. Yes, sir; I can do engineering, but I do not consider it——

Q. Have you done considerable railroad work? A. Right smart, sir.

Q. What was the character of that work? A. Several characters.

Q. Surveyor? A. Surveyor, repairing, building, constructing, etc.

Q. Are you connected with the construction of railroads leading out of Moultrie? A. Yes, sir; I have been. Now I am not.

Q. Are you familiar with the location of land lots No. 353, 354, 383, 384 in the 8th District of Colquit County? A. I am, sir.

117 Q. Did you make a survey of those lots? A. Yes, sir.

Q. In May, 1899? A. Yes, sir.

Q. Did you make this map which I now hand you? A. I did.

Q. This plat? A. Yes, sir.

Plat marked Exhibit No. 1 for identification.

Q. You made that survey at the request of the complainants in this case, their lawyers? A. Yes, sir.

Q. Was the county surveyor with you at the time, present at any part of the time of the survey? A. He was with me once, but I don't know whether it was on that survey, of making that map or not. I am not sure about that. He was with me once over there. He was with me at the commencement.

Q. The county surveyor is Mr. Tucker? A. Yes, sir.

Q. Didn't you and he run the middle line? A. I think so. Yes, the best of my recollection now, yes, sir.

Q. That is the line running east and west and then the line between lot- 353 and 352? A. Yes, sir.

Q. Do the entries on this map show the condition of the lot- as they appeared to you at the time you made that survey? A. They do.

Q. The number of acres stated in these different portions of the four lots are correctly stated and calculated? A. Yes, sir.

Q. On lot 354 you have an entry in red ink "Round timber." By round timber, what is meant to be indicated? A. Trees that had not been boxed. Timber that had not been boxed.

Q. That is to say that timber was in its virgin condition, neither turpentined nor boxed? A. Yes, sir.

Q. And that was the condition of lot 354 at that time? A. Yes, sir.

Q. Now, lot 383, you have entered on that lot in red ink "Timber boxed and turpentined this year"? A. Yes, sir.

Q. Was that apparent from the manner in which the trees were boxed and the condition at that time? A. Yes, sir.

Q. Then take lot 384, you have on that in red ink the entry "timber turpentined four years"? A. Yes, sir.

Q. Was that the apparent condition of the timber on that lot at that time? A. It was.

Q. On lot 383 and lot 384 then, while the timber had
118 not been cut off, it had been boxed and turpentined for the time indicated there, from its appearance? A. Yes, sir; just as the statement on the map shows.

Q. Then lot 353. You have that divided into two parts, north part and south part. Taking the north part, you have entered on there "Timber turpentined about 4 years old." Was that indicated from the appearance of the trees at that time. A. Yes, sir.

Q. And the lower or southern half of that lot 353, you have entered "Timber boxed and cut off 3 years ago, this ½ of lot." Was that indicated by the appearance of the trees? A. Yes, sir.

Q. On the southwest corner of that lot you have entered there "H. T. Crawford's still." That was a turpentine still, I suppose? A. Yes, sir.

Q. Do you know of your own knowledge when that still was put there? A. No, sir; not exactly.

Q. Was it put there before or after you came to Moultrie? A. It was there when I came to Moultrie.

Q. That was 4 years ago? A. Yes, sir. Didn't belong to Mr. Crawford at that time, though, I don't think.

Q. Was it known as the Cooper still at that time? A. It was known as the Reeves and Autry still. I was railroading along about that time.

Q. Now on the northeast corner of lot 353 you have drawn a line there on which you have written the words "Public Road," cutting off a corner on that lot, and you have outside "4½ acre field." Does that "4½ acres" apply to this corner on that lot that is indicated as being cut off between that and the corner of the lot? A. Yes, sir.

Q. Now the lot to the east of lot 353 is lot 352 isn't it? A. Yes, sir.

Q. Did that field extend into lot 352? A. Yes, sir.

Q. There is a house on lot 352? A. No.

Q. The house is on the corner? A. 353, the house is on.

Q. The house is on the corner of 353 and the stables are where? A. They are on lot 352.

Q. And the fields around the house extend principally on which lot, 352 or 353? A. 352.

Q. The clearing was principally on lot 352 and extends four and a half acres on that corner? A. Yes, sir.

Q. Since this survey was made, another railroad has been run across some parts of these lots, has there not? A. Yes, sir.

Q. What railroad is that? A. T. T. & G.

119 Q. The Tifton, Thomasville and Gulf? A. Yes, sir; Tifton, Thomasville and Gulf.

Q. Does that road run across more than one lot or only one lot? A. I think it runs across both. I have never examined it since the railroad went through there. I do not know exactly. I think it crosses both of them. I do not know exactly. I have not been there since the railroad was built.

Q. Did you run the line there? A. For the railroad?

Q. Yes? A. No, sir.

Q. Do you know who run it through? A. No, sir; I don't. The engineer corps of the Tifton, Thomasville and Gulf Railroad did it. I don't recollect who was at the head of the corps.

Q. The principal course of that railroad was to cross lot 354 wasn't it, or do you know? A. I do not know. I will not say positive about that. I have never been over the road since it was run out there. I know there is a railroad out there, but what direction it went I never have paid any attention to it.

Q. When you made this survey, Mr. M. P. Calloway was present? A. Part of the time; yes, sir.

Q. Do you know Mr. James Holmes, the gentleman present here this morning? A. Yes, sir.

Q. When you went to run that line between lot- 354 and 383 did you meet Mr. Holmes and Mr. Calloway out there in the woods? A. It seems we met him, or overtaken him. I will not be certain which, but we were with him.

Q. Did he show you the tree marking the lines between lots 354 and 383? A. He showed us one tree right by the side of the road.

Q. On the line between the two lots? A. Yes, sir.

Q. That was along the line which you ran between the lots? A. Yes, sir.

Q. Was Mr. Crawford present at the time you ran around any of these lots? A. He was part of the time, but not *not* all the time, he was there.

Q. Mr. H. T. Crawford, the defendant? A. He was there part of the time.

Q. When you were running lot 383 was he there then? A. He was with me at the time. Mr. Calloway was with me. We run this line between 354 and 383 down to that point and then up to here. (Indicating.)

Q. You and Mr. Calloway, and Mr. Crawford and Mr. Tucker run that line across from west to east between lot- 354 and 383 and between lots 353 and 384? A. Yes, sir.

Q. Up to where that line cuts the east line of lot- 353 and 384 and then you run the line on up to the northeast corner of the four lots? A. Yes, sir.

120 Q. And Mr. Crawford was present then? A. Yes, sir.

Q. What was the general condition of lot 354 at that time in regard to the timber, the extent of its being timbered, was it well timbered? A. Pretty well timbered. It was not timbered as heavily as some of the lots but it was about an average lot.

Q. And timbered in what you call average good timber for Colquitt County? A. Yes, sir.

Q. What was the condition of lot 383 in regard to timber, aside from the question whether it had been boxed or not, I want the timber itself, as to that being an averagely well timbered lot? A. It was about on an average with lot 354.

Q. Was that the same as 384? A. Yes, sir; all about the same apparently. Some parts I would have to go by the stumps, etc., where it was cut. It all averaged about the same.

Q. Is Moultrie north, or south of these lots? A North.

Q. How far from the corporate limits of Moultrie is it to the north line of these lots? A. I really never measured it, sir.

Q. Just estimate it about how far do you think it is? A. To the north line of those lots?

Q. Yes, from the corporate limits of Moultrie to the north line of those lots? A. I think it is just the distance of one row of lots, about seven eight-s of a mile.

Q. It is about the width of a lot between the corporate limits of Moultrie to the beginning of those lots? A. I think so.

Q. One or two lots? A. One or two lots, I have not noticed it closely or carefully.

Q. Do you know about what prices turpentine lots of average quality have been bringing in Colquitt County along the lines of railroad, I mean? A. I do not have any definite knowledge of any lot, what it sold for or what it brought. I have not sold one nor bought one. I haven't been directly concerned with one.

Q. What you know is just I suppose from hearsay? A. Hearsay; yes, sir.

Cross-examination.

Mr. PEARSALL:

Q. You are not county surveyor, are you Mr. Austin? A. No, sir.

121 Q. There is a county surveyor of this county? A. Yes, sir.

Q. The lines that you testified to here, between 353 and 352 were not run by run by processioners? A. I could not say whether it was or not.

Q. I mean to say you did not? A. At that time; no, sir.

Q. Do you know whether or not there was any notice given to Mr. Crawford and the adjacent land owners that you were to run that line, ten days before the time you ran it? A. I do not know. I know Mr. Crawford was present at the running there.

Q. Did you run it by any order of Court? A. I did not.

Mr. PEARSALL: You will note our objections to the testimony of Mr. Austin because there is a county surveyor of the county, and they have not complied with the statutes of the State as to marking dividing lines between land owners.

Q. These lines around the lot of land were made originally by the original survey of the State were they not? A. I could not tell you.

Q. How do you tell whether or not this lot 353, whether this house is on lot 353 or not? A. By courses and distances, and by blazes and chips indicating lines.

Q. To get the location of a lot you have to run what you call or is known as the old original line of the lot, do you not? A. Well that ought to be the way. I don't know whether that is carried out all the time.

Q. How would you know that this field about which you testified is on lot 353 or 352? A. By the lines.

Q. By what lines? A. By the line that was indicated by the compass and by the lots that mark that point.

Q. You had somebody to assist you, did you not? A. The county surveyor assisted me in establishing that line.

Q. You were assisted by the county surveyor in making this survey? A. Two lines, I did.

Q. Do you know which lines they were? A. Yes, sir.

Q. Which lines were they? A. Middle line and the line running north.

Q. I mean designate them by reference to the lots? A. Lines dividing 354 and 383, 353 and 384, east and west line, and north and south line between 353 and 352.

Q. You made no return of your survey to the ordinary of the county, did you? A. No, sir.

122 Q. You simply run this line as a private surveyor? A. Yes, sir.

Q. Paid by private parties to make this survey? A. Yes, sir.

Q. A civil engineer is not necessarily a man who can run a correct land line in this county? A. I should not think so.

Q. Do you know anything about the reputation in the community as to what was considered the dividing line between 353 and 354? A. None only what was shown me at the time I made the survey.

Q. That four and a half acre field and the dwelling house was on lot 353? A. Yes, sir.

Q. Does it appear to be an old settled place? A. Yes, sir.

Q. Been cultivated? A. Oh yes, sir.

Q. In a state of cultivation? A. Yes, sir.

Q. You do not know who established that settlement? A. I do not.

Q. Besides the surveyor who assisted you in running this line between 353 and 352? A. Mr. Crawford. I forget who——

Mr. Erwin:

Q. H. T. you mean? A. Yes, sir.

Q. And you don't remember who else? A. I do know them. I do not recollect who the other gentlemen were.

Q. Do you know what lot 353 is known as. Did you ever hear any particular name given to that lot of land? A. No, sir.

Q. In reference to whose lot it was? A. It was a Graves lot.

Q. I mean 353? A. I don't know. Those lots were indicated to me as Graves lots. That is all I know about it.

Q. By Mr. Callaway? A. By several parties.

Q. Who were they Mr. Austin? A. I really do not know. Sort of general understanding is about all I know.

Q. You spoke about lot 353 being considered a Graves lot. Did you ever hear that considered as a Graves lot? A. I do not know that I did until I got into it.

Redirect examination:

Q. Mr. H. T. Crawford also paid you a part of the surveyors for surveying the lot, did he not? A. No, sir.

Q. Didn't he pay you part of it for one day? A. No, sir; I do not have any recollection of it. I don't think he did.

123 Q. Wasn't the understanding that at the time he was to pay you part and he did not do it and you called on me for the whole amount? A. Yes, sir.

Q. Under a guarantee? A. I do not know that that was the understanding really. I was not present when Mr. Callaway and Mr. Crawford agreed upon it, therefore I could not say.

Q. He was present helping you run the line? A. Yes, I had the county surveyor there.

Q. And he made no complaint about the line being run wrong any way? A. Not a bit that I heard of.

MATTHEW TUCKER, called for the complainants, duly sworn, testified:

By Mr. ERWIN:

Q. Mr. Tucker, you are county surveyor of Colquitt County? A. Yes, sir; and have been for a good while.

Q. For a number of years? A. Yes, sir.

Q. How many years have you been county surveyor? A. About 22 years, but two years knocked out of that, which would make 20 years.

Q. You are familiar with the location of land lots Nos. 353 and 354, 383 and 384 in the 8th district of Colquitt County? A. Yes, sir; pretty well.

Q. In May of last year, 1899, did you assist Mr. C. L. Austin in running the original line between lots 354 and 383 and 353 and 384? A. No, sir; I was not with him on that.

Q. And the line along the east side of lot 353, between lots 353 and 352? A. Yes, sir; he was with me then.

Q. You and Mr. Austin established that line? A. Yes, sir.

Q. The line between lot 353 and 352? A. Yes, sir.

Q. You had located the position of the other line, had you not, the line between lots 354 and 383 and 353 and 384. You had located the line but never run it? A. Yes, sir. We run the line between 353 and 384.

Q. You run that line in there? A. That same day, and then betwixt 352 and 353.

Q. At that time you did not run it clear through back between 354 and 383. Did you run that line across there? A. I am not positive, I believe we did, I believe that same day.

Q. Didn't you start out at the still in the southwest corner
124 of lot 353 and with Mr. Austin and Mr. Callaway blaze out that line that western line from that southwest corner of lot 353 and on between lots 354 and 383, that line there? A. I believe we did.

Q. Blaze it out and then you came back to the still and ran it east? A. Yes, sir.

Q. Until it struck the east line of the lot 353 and then you run it up to the northeast corner of lot 353? A. Yes, sir; between that and 352. Yes, sir; that is the line we were to establish.

Q. In running that line you found a little settlement on the northwest corner (northeast corner)? A. Yes, sir.

Q. House and a little field, about 4½ acres? A. Yes, sir; several years ago I run that line and measured that field. From three to six acres. Three to five acres. No four acres and a fraction I think.

Q. On the northeast corner of that lot there was a house when you surveyed it some time prior to that time? A. Yes. The dwelling house was on 353.

Q. That survey was made by you about five or six years ago I believe you stated? A. Yes, six or seven years ago, I first run that.

Q. When you first run it, six or seven years ago from now? A. Yes, sir.

Q. You made an affidavit in this case previously, in which you said five or six, but that has been a year ago, so it would make it six or seven now? A. Yes, sir.

Q. Who did you survey the lot for at that time? Who asked you to survey it at that time, to run that line? A. I disremember.

Q. Mr. Bowers? A. Dr. Bowers. Old man Haney lived on the place.

Q. Mr. Haxney lived in that house?

Mr. PEARSALL: I would rather you would not lead him along there.

Q. Where did Mr. Haney live at the time? A. He lived on 353 his house was.

Q. What part of 353 did Mr. Haney live on? A. It was in the northeast corner.

Q. Is that on the four and a half acres that you refer to? A. Yes, sir.

Q. Now then what cuts off that four and a half acres from
125 the balance of the lot. Is there any line or road or anything of that sort that separates that four and a half acres. A. There is a public road, that he run his fence along with the road, and the old original line cuts through there and cuts the house off at 353.

Q. Now there is considerable clearing all around the house? A. Yes, sir; a right smart of it.

Q. A number of acres? A. Yes, sir.

Q. How much clearing do you suppose? A. 15 or 20 acres. 20 I would suppose.

Q. And the clearing runs over on this corner of 353 and the house was on the corner of 353? A. Yes, sir.

Q. And the stable was on which side? A. I declare if I know where the stable was. I believe they were back on 352.

Q. Well now, when you run that lot some seven years ago, what

was Mr. Haney's claim at the time in regard to that house, as to which lot it was on? A. I can tell you when he bought it——

Q. I do not mean that. What was he claiming about whether it was——? A. He claimed the line was not——

Mr. PEARSALL: I would like to know the purpose of that admission from Mr. Haney.

Mr. ERWIN: Mr. Haney was the man holding lot 352 at that time. I want to show by the witness that Mr. Haney claimed that at first until that survey was made; while it was being surveyed he was claiming that that part of the lot belonged to 352, to which 352 he was claiming title. Declarations of a man in possession as to what he was claiming at the time.

Mr. PEARSALL: Is Mr. Haney dead, Mr. Tucker? A. Yes, sir. Oh yes, sir. He has been dead several years.

Q. What was he claiming as to which lot that house belonged to, that clearing and that house? A. I can tell you, when he bought lot 352 there was a pine showed him for a corner out on the big road here, and he went by that tree. That was showed him for the corner, when the corner was back further east, and he just went and cleared up to the big road.

Q. Claiming that was part of 352? A. Certainly he thought it was.

126 Q. That is what he told you at the time when you were making that survey? A. Yes, sir. He got mad with me.

Q. For bringing it over on 353? A. Certainly, but he got satisfied by examining the lines, he run them himself, part of them.

Q. Mr. Tucker, lands in Colquitt County are in good demand now. Good market for lands here now? A. I think tolerable.

Q. Have they increased in value in the last few years—timber lands I mean? A. I do not know in that length of time, 4 or 5 years.

Q. The last four or five years? A. Yes, sir; considerably.

Q. There is a great deal of lands being turpentined in this county, is there not? A. Most all of it.

Q. A great deal being cut for timber, isn't it? A. Right smart for timber.

Q. Several large mills in this county? A. Yes, sir.

Q. Saw mills? A. Yes, sir; I don't know how many, heap of them.

Q. A great many? A. Yes, sir.

Q. A number of steam tramways built out through the county in different directions? A. Yes, sir.

Q. Do you know what is now a fair market value for turpentine privileges, on an overage timbered lot? A. I declare I don't.

Q. You do not know? A. No.

Q. How long have you lived in Colquitt County? A. I was born in it, and raised. It was not Colquitt then, but it was Thomas.

Q. And originally Irwin County? A. Yes, sir; way back. Right in this county I was born and raised.

Q. What year were you born, about how old are you? A. Day before yesterday I was 73 years old. That was my birthday.

Q. Did you know Eli Graves? A. Yes, sir; I was acquainted with him some.

Q. He had a home here in what was then Thomas County, now Colquitt? A. Yes, sir; about old Greenfield.

Q. At Greenfield? A. Yes, sir.

Q. How far is Greenfield from here? A. I do not know, 6 or 7 miles.

Q. From Moultrie? A. Yes, sir.

Q. Is that an old settlement there? A. Yes, sir.

Q. Is there a church there yet a brick church? A. Yes, sir; right there.

127 Q. Been there a long time? A. Yes, sir.

Q. Ever since the time when Mr. Graves was living there? A. Yes, sir; put up while he lived there.

Q. Right where he lived? A. Yes, sir.

Q. Do you know whether or not he was a minister? A. Old man Joel Graves was a minister, brother of Eli.

Q. Joel S. Graves was a minister. A. Yes, sir.

Q. Joel Graves moved away from here; didn't he go to Florida somewhere? A. He moved all about. I don't know where he did go. He went to Illinois one time, down to Brunswick one time.

Q. Did you know Cyrus Graves? A. Yes, sir; I have seen him a heap.

Q. Cyrus S. Graves, he was a son of Joel S. Graves, wasn't he? A. I don't think. I don't think he was a son of Joel Graves.

Q. I meant to say he was son of Eli? A. Eli Graves, that is right. Cyrus was a son of Abram Graves, I think that is right.

Q. You don't exactly remember about that? A. No, sir; I was acquainted with all. Cyrus was a son of Abram Graves, that is right.

Q. What business did Eli Graves carry on about Greenfield in this county? A. I declare I do not know.

Q. Anything about running a barrel factory or anything of that sort? A. Old man Joel did.

Q. It was Joel running that? A. Yes, sir; Eli might have been concerned in it for all I know.

Q. That was Joel Graves running that? A. Yes, sir.

Q. He was a preacher? A. Yes, sir.

Q. Did you know a man living down in this country along in 1852 to 1863 any where along in there by the name of James Redd or James Read? A. Jim Redd. I know one Jim Redd.

Q. Who was he? A. I declare he was just Jim Redd, that is all I know.

Q. Where did he live? A. Lived all over the county, around about here at different places. He lived about Moultrie a while.

Q. Did he used to work with the Graves, Joel Graves? A. Some as a hired man.

Q. Hired man? A. Yes, sir.

Q. You knew him by that name James Redd? A. Yes, sir.

Q. Redd, something like that? A. Yes, sir; I was well acquainted with him.

128 Q. Did you know any one in this county by the name of James Read in that time? A. I do not recollect now. I do not recollect the name Read.

Q. You do not remember anybody with the name of James J. Read? A. I don't remember him.

Q. Do you know what became of the James Redd that you spoke about. —. Yes, sir; he moved back up North and died, I think, up there somewhere.

Q. You do not know about that? A. No, sir; I just heard that.

Q. What do you mean by moving North, in Georgia? A. Yes, sir; in Marion County.

Q. You think he moved up about Marion County? A. Yes, sir.

Q. Georgia? A. I heard he died up in there somewhere.

Q. You do not know anything about it except what you heard? A. No, sir.

Q. He has been moved away from here a number of years? A. Yes, sir; a long time ago.

Q. That is all you know of those names, the only person you know now, you knowed in this country? A. I do not recollect Read at all. I might have been acquainted with him, but if I was I have forgotten.

Q. You have got a pretty good recollection, haven't you? A. Yes, I generally have had, though some things I would forget.

Cross-examination.

Mr. PEARSALL:

Q. You don't remember for certain, Uncle Math, about Read or Redd do you? A. Redd, I recollect him well, but Read I don't.

Q. Do you remember how he spelled his name? A. No, sir; I don't. We called him Redd. That is what we called him.

Q. Did you know Joel and Eli Graves. Did you know them both? A. Yes, sir; I was acquainted with both of them.

Q. Joel Graves was moving around considerably when the sheriff was after him. Do you remember anything about that, Mr. Tucker? A. The sheriff?

Q. Yes? A. I don't know. In the war times he dodged about a good deal.

Q. Do you remember his deserting the Confederate army? A. No, sir.

129 Q. Do you know how he got from Marion County down to Jacksonville during the war, how he passed through this county? A. No, sir.

Q. You do not remember? A. No, sir; I don't.

Q. Was Eli Graves a preacher? A. Joel was a preacher. Joel S. Graves.

Q. Wasn't Eli a preacher, too? A. I don't think he was.

Q. Did he preach through this country any? A. Who?

Q. Joel Graves? A. He preached down here at his church at Greenfield. I have been to his meeting.

Q. At Greenfield? A. That is all the place I ever knowed of his preaching.

Q. Do you know anything about the transaction of that deed that Joel Graves made Eli Graves, that block deed? A. No, sir; only what I have heard. I ain't knowing to it.

Q. This bucket shop, the shop down there at Greenfield, wasn't it a bucket shop instead of a barrel factory? A. They made buckets. I don't know whether they made barrels or not. They made a sight of buckets.

Q. How are the Graves lands usually considered here in the county?

Mr. ERWIN: I object to that question on the ground if it is intended to go into anything else except as to the condition of the timber on it, it is going outside of the direct examination, out of the scope of the direct examination, and any answers to the questions are not cross examination but belong to the direct examination of this witness on the part of the defense.

Mr. PEARSALL: I understood you brought out something about the reputation of these lands?

Mr. ERWIN: I never asked this witness a word about that.

Q. At the time, Mr. Tucker, that you surveyed this line between 353 and 352, who owned lot 353 or who claimed it? A. Dr. Bowers.

Q. Of Thomasville? A. Yes, sir.

Q. Were you county surveyor at that time? A. Yes, sir; I was.

Q. Was it processioning that you were running? A. I don't know; I do not recollect how come me to run the line when I did first run it.

130 Q. You were speaking about Mr. Haney? A. Yes, he lived on the place at that time.

Q. You don't know whether you run as processioners or not? A. I don't think we had any processioners at all.

Q. But lot 353 was claimed by Dr. Bowers of Thomasville? A. Yes, sir.

Q. When was that? A. You are too hard for me now. It is way back, several years ago. I don't know how long it has been.

Q. Who has been living on this lot 353 since that time? Do you know whether Mr. Elijah McCranie was cultivating it, living there? A. I think he lived there a year or two.

Q. Do you know whether Mr. Johnson ever lived there or not? A. Which?

Q. Daniel Johnson, and William Johnson? A. They might. I don't recollect. I know McCranie lived on it but there was several lived on the place.

Q. It has been cultivated since that time continually, has it? A. I think, pretty much.

Q. I am speaking about lot 353? A. Yes,sir; little house there on it.

Redirect examination:

Q. Mr. Tucker, you assisted in the running of those lines, in the establishment of those lines? A. The day Mr. Callaway was there and Mr. Crawford was there?

Q. Assisted Mr. Austin in locating the lines? At the request of Mr. H. T. Crawford, did you not, he partly? A. I think so.

Q. He paid you part of your services, didn't he? A. Well, somebody paid me. I don't know if he did not pay me a part of it. I ain't certain about that.

Q. Didn't you collect half of the fee from Mr. Callaway and half from Mr. Crawford? A. That is my recollection now.

Q. The part of lot 353 which you say has been since cultivated, is four and a half acres in that corner? A. Yes, sir. It has been cleared for a good while.

Q. That four and a half acres has? A. Yes, sir; old man Haney done it several years ago.

131 ELIJAH MCCRAINE, called for the complainants duly sworn, testified:
testified:

Examined by Mr. ERWIN:

Q. Where do you reside? A. Right here in Moultrie.

Q. In Colquitt County? A. Yes, sir.

Q. Been residing in this county a number of years? A. About 22 years.

Q. Did you know Mr. Isham Haney, who owned lot 352 in the 8th district of this county? A. Yes, I knew Mr. Haney.

Q. Did you afterwards own lot 352? A. I owned 50 acres of it.

Q. 50 acres of lot 352? A. Yes, sir.

Q. From whom did you purchase? A. I got it from Bob Beardon.

Q. He got it from whom? A. He got it from Haney.

Q. From Mr. Isham Haney? A. Yes, sir.

Mr. PEARSALL: We object to that, as the deeds are the highest evidence as to who he got it from, and who Mr. Beardon got it from.

Q. You got your possession from whom? A. From Mr. Beardon.

Q. And he got possession from? A. From Mr. Haney.

Q. You heard the testimony of Mr. Tucker about the house situated there about the corner of lot 353? A. Yes, sir; just as he told it was is the way it runs.

Q. Did you live in that house? A. Yes, I lived in that house.

Q. Did you go into possession of that as part of the 50 acre lot you bought? A. Yes, sir; I did when I first went there.

Q. When you first went there you went into it as being part of that 50 acre tract? A. Yes, sir.

Q. You bought that as being part of the lot? A. Of 352. I bought it as house being on lot 352.

Mr. PEARSALL: I object to that as to what he bought, because the deeds would be the highest evidence as to what he bought.

Q. Did you ever claim to own lot 353? A. No, sir.

132 Q. Never did while you were in possession of it? A. No, sir.

Q. How long did you continue in possession? A. About three years I think.

Q. When did you sell it? A. Well, I cannot tell you what date it was that I sold it. I think it was about '89 or '90 when I bought it, kept it 3 years, about '93 I sold it. I sold 50 acres that I owned there.

Mr. PEARSALL: I object to going into contents of the deed.

Mr. PEARSALL: You made a deed, did you not, Mr. McCranie?

A. Yes, sir.

Mr. PEARSALL: That expressed the time?

A. That deed expressed the time.

Mr. PEARSALL: I object to his going into the contents of the deed as to the time he sold it.

Mr. ERWIN: The fact of the sale can be proved by oral testimony and the time when made without reference to the deed. It might affirm or disa-firm the deed. The deed might not even speak the exact truth of the transaction.

Q. Did you pay any rent to anybody for that 4½ acres that you went over on 353? A. The first year I paid it. Who I paid it to I don't recollect, but it was for a man that claimed the land. I paid taxes on it for the rent of it that year, on that 4½ acres of land. I paid taxes on it that year.

Q. You only paid taxes on the 4½ acres? A. That is what I paid it on, for the land, according to the rent, that is what I done it for.

Q. I believe you made an affidavit in this case before, Mr. McCranie? A. Yes, sir; I did.

Q. Didn't you state in that affidavit I was never approached by any reputed owner of lot 353 in regard to said matter, nor ever paid or was requested to pay rent? A. I had forgotten that that

133 night at the time we fixed that up, but I did, I paid tax on that 4½ acres.

Q. You don't know who you paid it to? A. I paid it to the tax collector. I don't know who was tax collector. I don't recollect who it was.

Q. That is because the tax collector insisted on it, you paid it? A. No, I promised to pay that.

Cross-examination.

Mr. PEARSALL:

Q. Then you went in possession of lot 353 as tenant of somebody else? A. After I found out.

Q. That it was not on that? A. Yes, I stayed right there.

Q. Let me refresh your memory; didn't you lease this or rent it from Mr. Johnson? A. Yes, that's so, I did. I got it from Mr. Johnson. That's so. I got it from Mr. Johnson that year.

Q. And the rent you were to pay was to be the tax on the lot of

land? A. Yes, sir. And I paid that tax. I disremember what it was. It was a small amount.

Q. For the rent of this property? A. Yes, sir; I recollect now. I cannot recollect everything like a heap of people can anyhow.

Q. That land was rented as property of Dr. Bowers and Bruce of Thomasville? A. It was.

Q. It has been in their possession since then and occupied by their tenants has it? A. Well, I cannot tell you now since I left there.

Q. But while you were there, you were there as tenant? A. They claimed it.

Q. Claiming it as part of lot 352? A. No. I got dissatisfied after I got there, and I had the line run myself and saw where it run.

Q. And you afterwards recognized this as being on lot 353 and rented it and paid rent for it as tenant of somebody else? A. Yes, sir; I got dissatisfied and had the line run myself.

Redirect examination:

Q. You mean you paid taxes on lot 353 or 352? A. 353 I paid taxes on, the first year I went there, I paid that.

Q. What year was that? A. The first year I moved to the place. I disremember what date I moved to the place.

Recess was taken until 1:30 this afternoon.

134 JOHN F. PIDCOCK, called for the complainants, duly sworn, testified:

Examined by Mr. ERWIN:

Q. Where do you reside? A. Moultrie.

Q. Colquitt County, Georgia? A. Colquitt County, Ga.

Q. What is your general business? A. President Georgia Northern Railroad.

Q. That is a railroad running from Moultrie? A. Moultrie to Pidcock, and to Doerun.

Q. That connects at Moultrie with the Savannah, Florida and Western Railroad? A. At Pidcock; yes, sir.

Q. Are you engaged in the lumber business also? A. At times, we buy and sell.

Q. Are you acquainted with the general value of lands? A. Yes, sir.

Q. In this community? A. Yes, sir.

Q. What, Mr. Pidcock, is the value per acre for turpentine purposes of an average or fair lot of timbered lands situated say on the line of your railroad and along the line of the T. T. & G. Railroad near Moultrie, say situated about where the Crawford still is, in that neighborhood? A. Down here at Cooper?

Q. At the station Cooper, a mile or two from the center of Moultrie? A. I would say $3 per acre.

Q. That is for the turpentine privilege? A. Turpentine privilege per acre.

Q. To take the turpentine from turpentine lands, it would run

about how many seasons usually? A. About three years at that price.

Q. About three years? A. Yes, sir.

Q. About what would be the value per year, if you divide it up? Say the first year would be what? A. I am not a judge of that as I have never worked the turpentine business, but I sold it that way. 3 years' lease at $3 an acre.

Q. After the turpentine has been extracted what is the value of the timber on such lands for milling purposes, just such timber as would sell for timber purposes? A. Three to three and a half dollars per acre, in that neighborhood. Further away from the track, it is worth less.

Q. You mean situated about where I stated? A. Yes, sir.

Q. After the timber and the turpentine has been taken away what would be the value of the land situated about where those lands are situated, about 353, 354, 383, right along there? A. That is nearer Cooper?

135 Q. Yes, right there? A. I would say $4 to $5 per acre.

Q. Look at this plat marked "Exhibit I" locating the H. T. Crawford still to the southwest corner of lot 353, that is where you call Cooper isn't it? A. Yes, sir.

Q. What you have testified about would relate to the four lots? A. In and around there.

Q. In and around there? A. Yes, sir; I think that a very fair valuation.

Q. You are acquainted with those lots, are you not? A. Yes, sir.

Cross-examination.

Mr. PEARSALL:

Q. You have never dealt in turpentine land, have you, to any extent? A. Yes, sir.

Q. To any extent? A. No, not to any great extent.

Q. About how many acres have you bought or sold? A. I myself have not sold many. My brother Charles has sold more. I sold some up here two years ago to Mr. Spivey and Allen.

Q. How much did you sell? A. 60 acres at $3 an acre.

Q. Did you sell any more for $3 an acre? A. I think that is all I ever sold.

Q. Have you ever heard of any more in this county that sold for that much? A. Yes, sir.

Q. Do you recall it now? A. I think Mr. Ashburn sold Mr. Green some for that.

Q. $3 per acre? A. Yes, sir; I have heard of others paying that, but I have forgotten now.

Q. The price of timber would be regulated by the conditions would it not, by the physical conditions, that is it would depend upon a man's investment, whether he had the location? A. Well, I do not know as to that. Somewhat probably.

Q. In other words if this lot of land had been one lot with Mr. Crawford's still, all the other timber around there had been cut, could you have disposed of that at $3 an acre? A. Yes, sir. This 60 acres

I sold was off from everything. All cut around it, and Mr. Spivey's still was away from it.

Q. But he had a still near there in the neighborhood where he could use it? A. About two or three miles.

A. About two or three miles.

Q. The price of saw mill timber is what you say? A. Ranging now from $2 to $4 an acre.

Q. Do you remember the transaction that your brother had with Mr. Vereen? A. Which brother?

136 Q. J. N. Pidcock, Jr.? A. I know something of it.

Q. Do you remember the consideration he paid for some large body of timber? A. He did not buy it. Mr. Carmen bought it for $1.25 per acre.

Q. Do you remember what your brother paid for the land? A. I have forgotten, whether $1.50 or $1.25.

Q. It was not as much as $3 per acre? A. No, sir. It was quite a while ago. 7 or 8 years ago.

Q. Sawmill timber is worth $2 an acre? A. From $2 to $4 an acre.

Q. Do you remember the transaction between Mr. Ashburn and the Union Lumber Company? A. Yes, sir.

Q. Do you know the consideration of that transfer of 30,000 acres? A. Yes, sir; I do.

Q. What was it? A. I know we offered $2.25 an acre for the timber.

Q. That was for a large body? A. That was for the timber.

Q. That included about 30,000 acres? A. Yes, something like that.

Q. A large body would be more valuable than a small piece? A. No, I don't know.

Q. For instance this one tract of land, one lot of land, 490 acres would not be as valuable as 10,000 acres? A. To some people more valuable.

Q. In making a location would you pay as much, if you were going into business, for one lot of land as you would for a location? A. If I was a small mill man I would pay more than large bodies bring.

Q. It would depend upon——? A. Upon the capacity.

Q. The price of timber would depend upon the ability of the purchaser and the availability of other timber in that neighborhood? A. It depends on how some people look at it, the quality of the timber I think is an important matter.

Q. Its location and the condition whether he could get other timber? A. The location has a great deal to do with it.

Redirect examination:

Q. There are turpentine stills right near Moultrie, aren't there? A. Yes, sir.

Q. Mr. Crawford has one, operates one still in this neighborhood? A. He did down there.

Q. Mr. Holmes is operating one near there now isn't he? A. He is operating one here now.

137 CHARLES W. PIDCOCK, called for the complainants, duly sworn, testified:

Mr. ERWIN:

Q. Mr. Pidcock, you reside in Moultrie, Georgia? A. Yes, sir.

Q. Resided here a number of years? A. I have lived in the country mainly. I have not lived in Moultrie but a few months.

Q. You have operated a road here? A. Yes, for the last 8 years.

Q. You are acquainted with the value of lands in this neighborhood? A. Yes, sir; somewhat.

Q. You have had to do somewhat with buying and selling lands in this country? A. Yes, sir; considerably.

Q. Have you had anything to do with the saw mill business? A. At one time I was engaged in the saw mill business.

Q. You are acquainted with the lots of land lying about the place known as Cooper, H. T. Crawford's still? A. Yes, sir.

Q. Right near Moultrie? A. Yes, sir.

Q. Lots 353, 354, 383, 384? A. Yes, I have seen them.

Q. Taking timber such as was on those lots in their virgin state I mean, what would be the value of the turpentine privilege per acre for lots situated as those are, in the neighborhood of Moultrie and of these railroads? A. I would say from $2 to $3 at present.

Q. What is the value of the timber privilege for milling purposes? Such timber as would be cut off in a grant of milling privileges? A. Where it is close to the track like that, it would be worth $3 to $5 an acre, owing to the number of trees per acre.

Q. For average lots, where in the virgin state, situated like those are there? A. I would say about $4.

Q. Those lots. You are acquainted with the lots, about the amount of timber on them, I mean in general, they have been cut off, but where they are standing in their virgin state? A. Yes, sir.

Q. You would say those are worth about $4 an acre? A. After the turpentine privileges are out, I would say they are worth $4 per acre for saw mill purposes.

Q. After the turpentine and saw mill is taken out, what would the land be worth, such as those are, as near Moultrie as they
138 are? A. Any where from $3 to $5 per acre. I would think that land was worth fully $4, maybe more.

Cross-examination.

Mr. PEARSALL:

Q. The value of timber for saw mill would depend upon its location and proximity to somebody's still, wouldn't it? A. That and railroads together.

Q. And also upon the price of naval stores products and the price of lumber? A. Certainly.

Q. This timber privilege has not been worth the amount you state now for any considerable length of time has it? A. In the last eighteen months or two years it has been.

Q. Before that it was not worth anything like the amount you

say it is worth now? A. It has been gradually increasing for the past five years.

Q. And it depends upon its proximity with other timber? A. Not exactly, Mr. Pearsall.

Q. That is, for instance I mean this, Mr. Pidcock, that a lot of land itself the timber would not be valuable unless there was other timber there available to the plant or turpentine farm? A. O yes, sir; sometimes small saw mills pay a great deal better than large ones.

Q. I am speaking of turpentine now? A. One lot of land itself, there being other turpentine timber to work, it would be.

Q. Where there was no other turpentine timber? A. If nothing but a desert all around, it would not be.

Q. So it depends upon the availability of other timber. A. Other timber virgin or being worked at the time.

Q. And you say the present prices of timber are these prices you get now? A. That is the price. It has been bringing that price for a year and a half or two years. Ashburn received it for four or five years.

Q. Do you know of any that has been sold for $3 an acre recently—turpentine privileges? A. Oh, yes.

Q. What? A. I was a party to selling a small body last year, two or three miles from a still.

Q. Spivey and Allen? A. Yes, sir.

Q. You don't know of any other? A. We got $3 for that.

Q. Do you know of any other you sold for that price? A. I have heard of others, I could not specify any certain lots.

139 A. D. PATTERSON, called for the defendant, duly sworn, testified.

Mr. PEARSALL:

Q. How long have you been a resident of Colquitt County? A. Going on 29 years.

Q. Have you held any positions in the county, any official positions in the county? A. Yes, sir.

Q. What were they? A. I was clerk of the Superior Court, judge of the County Court.

Q. Do you remember or do you know anything about lot of land 353 in the 8th land district of this county? A. Yes, sir.

Q. Did you have anything to do with that land, Judge Patterson? A. Yes, sir; I was agent here of Dr. Bowers. Bruce and Bowers.

Q. Do you remember about what year you assumed control of this land? A. I don't exactly.

Q. As near as you can remember to be accurate about it, Judge? A. Sometime along I think about '85 or '86, somewheres about there, as well as I can recollect. I haven't known anything about you having me here or I could have brought some papers that would have shown exactly the date.

Q. Is there a clearing on this lot that you speak of? A. Yes, sir.

Q. House, dwelling house? A. Yes, sir.

Q. Did you rent that house and cultivatable land to anybody? A. Yes, sir.

Q. As tenant of Bruce and Bowers? A. Yes, sir.

Q. What year was that, if you remember? A. It seems to me it was about '85 or '86. Somewhere about it.

Q. Do you remember the first tenant you rented it to? A. Charley Fason.

Q. He stayed there and made a crop? A. Yes, sir.

Q. Lived in the house? A. Lived in the house.

Q. After he left, Judge, who then went in possession of it? A. Mr. Johnson, I think.

Q. He lived in it? A. Yes, sir.

Q. Was there a tenant occupying and cultivating this land from the time you were agent and assumed control, until it was sold by Bruce and Bower? A. Yes, sir.

Q. Cultivated it every year as tenant of Bruce and Bower? A. Yes, sir; Bruce and Bower.

140 Q. Did you ever hear of any other claims to this lot of land? A. I never did.

Q. Except Bruce and Bower? A. No, sir; I never knew any other.

Q. Did you ever hear of the Graves claim? A. Graves sold to Bruce and Bower.

Mr. Erwin: I object to that answer and move to rule it out on the grounds, first, that the particular Graves stated is not named. If there is a sale the evidence of it would be by the deed of sale to make it valid, and there is no proof of loss of any original deed and that the witness must state facts within his knowledge and not conclusions, and that the answer is not responsive to the question.

Q. You say you knew nothing about it as Graves' lands? A. No, sir; I did not say that. I knew, because I had the title in my hands. Graves sold it to Bruce and Bower.

Mr. Erwin: I move to rule out the answer because it attempts to prove by parol evidence of a title which is not produced or accounted for, and it is an improper way to show title.

Q. Do you know the value of timber lands in this County? A. I do not know that I do now. I used to know them.

Cross-examination.

(Mr. Erwin:)

Q. You have heard the testimony of Mr. Tucker, county surveyor, and Mr. Austin, in reference to the survey last year of this lot 353 and about the fact that there was only four and a half acres in cultivation on lot 353, which is in the upper right hand corner of the lot, on which the house formerly occupied by Haney is situated. Is that part of lot 353? A. I have not heard their testimony. I do not know what they swore.

Q. You were not in the Court room? A. No, sir.

Q. There is a house there at the upper right hand corner that is

the northeast corner of lot 353, which Mr. Isham Haney lived in, is that the house you talked about? A. Yes, sir.

Q. That is the house you are talking about? A. Yes, sir.

Q. Now, there is a public road that runs along in front of that house and cuts off the northeast corner of lot 353, now the part that was in cultivation that you say you rented for Bower, was
141 that part between the public road and the corner of the lot, wasn't it? A. Yes, sir: I do not know how many acres was under fence.

Q. Who did you rent that to? A. Mr. Johnson.

Q. And afterwards to? A. Mr. Johnson.

Q. They cultivated a large part of lot 352 also, didn't they? A. Yes, sir.

Q. Did you rent that to them also? A. No, sir.

Q. All you rented to them was that? A. All there I rented to them was Bowers' land.

About 15 or 20 years ago I helped the surveyor survey it when Haney lived there.

WILLIAM E. JOHNSON, called for the defendant, duly sworn, testified:

(Mr. PEARSALL:)

Q. What is your name? A. W. E. Johnson.

Q. How old are you, Mr. Johnson? A. I am 63 years old.

Q. How long have you been living in Colquitt County? A. Ever since I was born.

Q. Did you ever live on lot of land 353 in the 8th land district of this county? A. Yes, sir.

Q. Who did you rent that from, Mr. Johnson? A. Mr. Patterson.

Q. A. D. Patterson, Judge Patterson? A. Yes, sir.

Q. Do you know who he was acting for? A. Judge Bowers.

Q. Of Thomasville? A. Yes, sir.

Q. About how long ago was that you rented this land from him? A. I suppose about 13 years.

Q. About 13 years ago? A. Yes, sir.

Q. Did you move on this place? A. Yes, sir.

Q. Live in the house. A. Yes, sir.

Q. And cultivate part of the land. A. Yes, sir.

Q. How long did you live on this land? A. We stayed there about three years.

Q. What was the rent that you paid? A. I paid taxes on it.

Q. Paid taxes on the lot of land? A. Yes, sir.

142 Q. After you moved away from there do you know whether anybody else moved on there or not? A. Yes, sir.

Q. Who did? A. Mr. McCranie.

Q. Do you know how long he lived there? A. No, sir; I don't know for certain, some 2 or 3 years.

Q. And cultivated and raised a crop on it? A. Yes, sir.

Q. You lived on there with your family? A. Yes, sir.

Q. How many in your family? A. Well, there was about ten of us.

Q. Did you sub-rent it to Mr. Elijah McCranie? A. My son did. After I first rented it, he went down to Thomasville and saw old man Bower.

Q. You need not mention that. Your son is here. We will bring that out.

Cross-examination:

(Mr. ERWIN:)

Q. Were you present this morning when Mr. Tucker and Mr. Austin testified? A. No, sir.

Q. I ask you now, then, this house that you lived in on lot 353 is in the northeast corner of the lot between the public road and the corner of the lot, isn't it? A. Yes, sir.

Q. And it is just that little piece of the lot which is situated between the public road and the corner of the lot, what is cut off from the lot by the public road? A. Yes, sir.

Q. You cultivated also 15 or 20 acres more on lot 352, right adjoining it, didn't you? A. Yes, sir.

Q. And the stable is over on lot 352 side, wasn't it? A. It was, before we moved it.

DANIEL S. JOHNSON, called for the defendant, duly sworn, testified:

(Mr. PEARSALL:)

Q. How old are you, Mr. Johnson? A. 30 years old.

Q. You are son of William E. Johnson who has just testified in this case? A. Yes, sir.

Q. Do you know anything about lot of land 353 in the 8th district of this county, Mr. Johnson? A. Yes, sir; I guess so.

Q. I speak of the lands of Bower and Bruce, of Thomasville? A. Yes, sir.

143 Q. What do you know about it, Mr. Johnson? Go ahead and state what you know about it. A. Best of my memory it has been somewhere about—I cannot tell to the years—some thirteen years ago this Fall, the old man moved there. I count back ever since—

Q. You mean by "Old man" your father? A. Yes, sir. At that time I was under age. I went there with him. I stayed on the place with the old man until later in the year, after I got up where I coul- work about, and that year I worked off there. After that time, the old man remained on it, he rented it, my understanding was, from Judge Patterson; was to pay the tax on the Bowers land for the use of the land and house. Some time along in the Fall of the year, I disremember the month, I and George Hammond went to Thomasville together and I rented it from Bowers himself. I understood it belonged to Mrs. Bruce and Mr. Bower, I think. I tried to buy it at the same time and in the shape of the title belonging

to the two I could not say, some way, he did not take it. I offered if, I mistake not, $800 for it, for the land; he asked me $1000. I said I could not give it. But later I wrote back to him to know if he would take $1000 and he said he would not. Back a little further I spoke of renting the place there. I rented it from Mr. Bowers, and was to do some improvement to the land and still keep the tax which was $5 a year paid up on the total land, that is what it cost me a year while I kept it. Paid the tax up total on the land, which was $5, and I was to improve the fence that was on the land, split rails and repair the fence. Part of it had been burnt up a few years before that; fire had got into it, and burnt some of it. I split rails and repaired the fence. I remained with the old man; he stayed in the house, and worked on the place two years. I think, sowed the Bowers land in oats the third year and sold it or kind of sub-rented to Mr. Elijah McCranie, and he stayed some few years on it, as much as two or three.

Q. You said something about $1000 for the land, was that land timber and all? A. Total thing. I offered him $800.

Cross-examination:

(Mr. Erwin:)

Q. When did you move off of it? A. I remained on it after I went there about 13 years ago, three years. The fourth year I sub-rented to Elijah McCranie after sowing some oats on it.

144 Q. I asked you one question, how long it was since you moved away from there? A. Let me see. I have to count back a little, I suppose 10 years this January.

Q. Since you moved off of it? A. Yes; I can count back and state identically, I suppose 10 years this January coming, not the past January.

Q. 9 years this past January? A. Yes, sir.

Q. The house you are talking about, that you lived in, is the house situated on lot 353, between that public road and the northeast corner of the lot, which is a little strip cut off between the public road and the corner of the lot that you have got fenced in. A. The road runs nearly north and south.

Q. Look at this plat, made by Mr. Austin, survey made by Mr. Tucker, Exhibit 1? A. That is very near in the shape the land lay in there.

Q. Now, along that public road you put a fence, didn't you? A. Just on the inside of the road back towards the line like.

Q. The house is up towards the northeast corner of the lot? A. Sort of towards the corner, while it stands about, from the line, from the north line, 100 or further yards. I never measured the distance. I haven't noticed it closely, not thinking of such a thing.

Q. If those surveyors make it four and a half acres in that corner, you do not dispute it? A. I never measured it; no sir.

Q. The part you claim you paid rent on, was that little part in there between the public road and the corner? A. Yes, sir.

Q. And the house is on that part? A. Bowers' land. What I

know as the Bowers land. Never known it to be anything else until this Spring.

Q. That part was the part you rented; that is, that little part in there? A. Yes, sir.

Q. You cultivated also a large part of lot 352 that was adjoining? A. Yes, sir; belonged to Bearden, I believe. That was part of it belonged to Bearden.

Q. You had a deed? A. No, sir; none at all.

Q. No deed at all, just cultivated it? A. Only rented it.

Redirect examination:

Q. When you say Bowers land, you mean Bowers and Bruce? A. Bower and Bruce land was the way I understand—I made the contract with Bowers. You understand the old man he told me it belonged to Mrs. Bruce; I think, if I mistake not, I think it is Bruce, I think Mrs. Bruce.

145 Cross-examination:

Q. When you say Bower told you the land belonged to Mrs. Bruce? A. He told me it belonged to him, one-half was to be his; it was not divided. It seems to me he said it was to come through some Bruce to him some way. One part belonged to Bruce, it seems like he spoke. I cannot say. It has been several years back. I will not say. I was young.

WILLIAM M. MCMULLEN, called for the defendant, duly sworn, testified:

(Mr. PEARSALL:)

Q. What is your age, Mr. McMullen? A. I was born the 4th day of March, '34. That is what the record shows that father and mother left me.

Q. Where were you born? A. 4 miles north of Boston in Thomas County.

Q. Where have you lived all of your life? A. There in Thomas County, and in this County. Was in this County when it was made, when it was cut off, and have been in it ever since.

Q. Were you a soldier in the Confederate army? A. Yes, sir.

Q. Ever been involved in any litigation before, Mr. McMullen? A. Never was in my life until I got into it with Mrs. Graves.

Q. This is the only lawsuit you ever had? A. First I have ever had.

Q. When did you first know Mrs. Jennie L. Graves and her two daughters, Ida and Minnie? A. The first I ever knew of her was before the two girls were born. The first I ever knew of her. The first time I ever saw old Lady Graves and her husband. I stayed all night at her house, about three miles or three quarters above here one night. And they came to Albany on the cars and they hired a hack and came out, and got into Big Banch this side of old man's Rawl's place, and the horses stalled in the water and wouldn't come out. The negro driver cut the horses out. Mrs. Graves she got astride

one-horse and Cyrus got astride the same horse behind her to hold her on, and rode back to where I was staying all night. And
146 they came up there in that fix. That was the first time I ever saw her.

Q. Did you ever represent Mrs. Graves in their landed interest in this county? A. Yes, sir.

Q. When did you first begin to represent them, Mr. McMullen? Do you remember what year it was? A. I could not tell you exactly what year it was. It has been somewheres not far from about 15 years ago. I could have brought papers, and I have got books that show from the very first start of it. The man is on the ground, the first man I entered suit against, that ever got on any of her land. He is right here now.

Q. You were employed locally to look after her lands in this county to represent them? A. Yes, sir.

Q. Return it for taxes, keep off tresspassers, etc.? A. Yes, sir, and report to Col. McIntyre, young Tom.

Q. Did you confer with them about the lands? A. Yes, sir. Right in E. P. Thompson's house in Thomasville.

Q. In looking after these lands were any suits ever filed? A. Yes, sir.

Q. How many? A. The first suit we brought was a suit against Philip Norman.

Q. You reported to Col. McIntyre that Philip Norman was trespassing on this land? A. Yes, sir.

Q. He filed suit? A. Yes, sir.

Q. It is neither one of these lots? A. It is 345, I think.

Q. You attended Court as a witness? A. I attended Court. The case never was tried. Finally Col. McIntyre made a compromise with Mr. Norman. Gave him part of the land.

Q. What title papers did Mrs. Graves have to this land at the time you assumed control? A. They had one title from Joel S. Graves to Cyrus S. Graves to all the lands in one block deed.

Q. The other evidence of the title was missing? A. Yes, sir.

Q. What did you do towards supplying that evidence? A. I knowed. I had an idea that old man Joel Graves had all the back papers, plots and grants; when he sold land he generally got in a lawsuit with the man buying it, or some controversy, and he could make a compromise and give them so much land and make a deed, and I had an idea that the back papers were all left at his old home. I went first from here to a place called Hillsdale.

Q. How far is that? A. 30 miles, I suppose, in the
147 Brunswick & Albany road. There the widow of Joel S. Graves, his second wife, said she did not know it positive, but she was satisfied that Cherry Graves had the back papers. I come home and went from here to Sparks in Berrien County. I failed to find them there, and I went from here to John Owens', in Brooks County, and at a saw mill out there I found Spencer Graves working at a saw mill. He hummed and hawed along and said he might find them, but did not have time to go. I asked him what was lacking. He said if he stopped, he could not run the works. I had my

son with me. I told him to get in the buggy, that my son would fill his shoes, if it was to pile slabs or anything else he wanted.

(Mr. ERWIN:)

Q. Which son? A. My son, John. We went over there to John Owens'. He went into an old trunk. It was full of old papers. And there he got the original plots and grants.

Q. To these lots of land. A. Yes. One plot and grant to one lot of land she claimed we never could find.

Q. You were gone some time in hunting for these papers? A. Yes, sir; of course, there was three different trips of it

Q. After getting up these original papers, these title papers, did you have any other trouble about any of her land? A. Before I got up all the original papers I brought suit against Mr. D. A. Autrey for 384.

Q. What kind of suit; do you remember what kind? A. Yes, sir; filed a bill for injunction. The Court allowed him to go ahead and chop it 15 inches high and dip the crude gum out of it that year. He went over the rule and I reported back to Col. McIntyre and he *taken* [took] out some papers for contempt of Court, but it went on and never was no t*d*ial brought about it.

Q. Did you attend the hearing at Thomasville. A. Yes, sir.

Q. At the request of Col. McIntyre? A. The young Mr. McIntyre; yes, sir.

Q. Get up any affidavits? A. I had several parties summoned there to Court. I told you it never was tried. Col. MacIntyre, I laid it to him. I always blamed him with it.

Q. Did you ever get any money for notary fees? A. I never received a cent from them in my life.

Q. Did you ever pay anything? A. Yes, sir.

Q. For those services, have you ever been paid any amount at all? A. Not a cent. I paid the clerk of our Court for copy of old block deed a dollar and a half.

148 Q. In going around hunting for plot and grant? A. Never received a cent from them, nor none ever been paid. I used my own time and spent my own money. In going to Thomasville to attend these hearings, I used my own time and paid my own hotel bill and stable bill.

Q. When you went over to this lot of land 384 to get up evidence that there had been a violation of the Judge's order, did you go do it at your own expense? A. Yes, sir; went and took old man Jim Murphy. He went there on crutches and measured it on his crutch, brought his crutch to town and measured it by a square and went before Dr. Culpepper and swore to it.

Q. You attended the Superior Court in this county? A. Was here every Court.

Q. Never received any compensation for it? A. None, not a cent.

Q. Has Mrs. Graves, *of* [or] any one for them, ever paid you anything for your services? A. Not a cent.

Q. Did you supervise and look over their lands for them? A. I did.

Q. Is it customary in this country to have a local agent for non-residents? A. Yes, sir; it has been for a good many years.

Q. What was it worth, Mr. McMullen, a year; what do you think is a conservative estimate of the work you did for them? A. Well, sir; what it was worth is a hard matter to tell. How the first part of the time, there was a while during the first commencement there was not so much from that, but since this turpentine business got in there, a man just had to be watching all the time to see whether anybody was tresspassing on it or not, and it consumed a good deal of time. I never could leave home yet without its costing me money out of my own pocket.

Q. You sued out an attachment against them? A. Yes, sir.

Q. Before you sued out the attachment, did you notify Messrs. MacIntyre & MacIntyre that you could not represent them any longer? A. I did.

Q. Do you know anything about lot 383? A. That is one of the lots I was looking after I thought was hers.

Q. Did you know anything about the trade between H. T. Crawford or S. L. Hayes and John McMullen? A. No, sir; not until after it was accomplished, made.

Q. John McMullen is your son? A. Yes,sir.

Q. Married? A. Yes, sir.

149 Q. How old is he? A. He was born on the 22nd day of September, 1866.

Q. Does he live with you? A. No, sir.

Q. Did you ever consult with Mr. Crawford about this matter before the trade was made? A. Never did.

Q. Did you ever speak to him about it? A. I never met Mr. Crawford but once to know him in my life. I did not know him then only just as we met. If I ever met him *him* before in my life, I did not know who he was.

Q. Did Col. MacIntyre ever speak to you about this lot? A. About selling this lot?

Q. Yes? A. No, sir.

Q. Mr. Hayes, did you ever consult with Col. MacIntyre about it, or Mr. Crawford, or your son? A. No, sir.

[Q.] Did you receive anything from the sale of this land? A. Never received nothing, nor seen nothing.

Q. You knew nothing about the trade between John McMullen and H. T. Crawford? A. No, sir.

Q. You returned all of the lands of these complainants for taxes, didn't you? A. Yes; I returned all that was ever given to me, turned over to me or that I [had] taken charge of, 353 never was turned over to me as their property.

Q. Did you know Joel S. Graves and Eli Graves? A. Yes.

Q. What kin was Joel S. Graves to Cyrus Graves? A. He was his uncle.

Q. Who was Cyrus Graves' father? A. Abram Graves.

Q. Joel S. Graves and Ely Graves? A. Joel S., Ely and Abram Graves were brothers.

Q. What kind of preacher was Joel S. Graves? A. He was a Presbyterian.

Q. Was Eli Graves a preacher? A. Yes, I think so, though I never heard him preach. I have heard Joel L. Graves.

Q. Cyrus Graves went into the Confederate army? A. Yes, he went towards the last after he was conscripted.

Mr. ERWIN: I object to the question as being irrelevant and immaterial. I object to the answer as being irrelevant and immaterial and not responsive to the question and undertaking to prove by parol a matter that has to be proved in a different way and by evidence that is competent.

Q. These lands that were conveyed by Joel S. Graves to Cyrus Graves, or rather to the father of Cyrus Graves, Abram
150 Graves, you know why they were conveyed to him? A. No, sir; I do not, only by what I heard Mrs. Graves say.

Q. What did she say?

Mr. ERWIN: I object to the question, also to the answer. In the first place it does not, the question does not say what particular time the statement was made, under what circumstances it was made. To make the question at all relevent or admissible, the time and circumstances under which the statement was made must be stated because there are other parties claiming title to the lands with complainant here. Any statement of Mrs. Graves must be at such time and place and under such circumstances as to bind the other parties.

Q. Do you remember the date she made the deed from herself to her two daughters? A. No, sir; I do not. It was somewhere eleven or twelve years ago.

Q. That she made the statement? A. She made the deed to her daughters.

Q. Was this statement that you were about to speak about now, was that before or after she made the deed to her daughters? A. Afterwards.

Q. After she made the deed to her daughters. A. Yes, sir.

Mr. ERWIN: I object to the question, as the title to the lots had passed to all the lots to which this witness now claims he had anything to do with all. Lots 353 is the only lot that he claims he had nothing to do with and the only lot in which there is any title left in Jennie L. Graves. This statement now was made by Jennie L. Graves after the date of the deed conveying the lots to her daughters.

Q. What valuation did you assess this land in returning them for taxes? A. Last few years I returned them at $2.

Q. Land, timber, per acre? A. Yes, all.

Q. Land, turpentine timber and all? A. Yes.

Q. She paid taxes on it at that valuation? A. Yes, sir. That was as high as anybody went in the county.

Q. Did Mrs. Graves, or either one of them, complain that you were returning these lands for taxes at too small a valuation? A. No, sir; she complained that I was returning them too high.

Q. Are you familiar with the value of timber lands in this county?

A. Not right now at present. I have not been paying much
151 attention to it. There was a while, while any sales were going on, I had some knowledge of it. The last in which there was any trade taking place in timber, it sold for $2.50 an acre. I mean a trade made.

Q. Were you in Thomasville at the time the deed from Hays' administrator to McMullen was made? A. No, sir.

Q. At the time John McMullen sold H. T. Crawford this lot of land? A. No, sir.

Q. You knew nothing about it at that time? A. I knew nothing about it.

Q. Did you ever hear of it before? A. Not before, but afterwards I did.

Q. Have you any interest directly or indirectly in any litigation or trade between Crawford and McMullen? A. Not a particle in the world. I ain't received anything.

Q. Are you to receive anything? A. No, sir; I ain't to receive anything.

Q. You say you have never been paid anything for your services? A. I ain't never been paid anything for services. I sued for what I claimed.

Q. Before you did that you notified? A. I notified Tom MacIntyre I should have nothing more to do *to do* with her under no circumstances, that she would not pay me for my services, and I was not going to work for her any longer.

Q. In your bill of particulars you have February 14, 1895, trip to Thomasville in relation to lot of land 384 in Colquitt County, that is the Autrey lot that was in litigation? A. Yes, sir.

Q. $10, was that reasonable? A. I thought it was, then; I think so yet.

Q. 3 days searching for plots and grants, $3 a day, was that a reasonable sum? A. I thought so; I think so yet.

Q. Paid the clerk of the Court for copying deed, G. W. Newton, was that for Mrs. Graves? A. Yes.

A. $1.50, she has never paid you for that? A. No, sir; never paid me for nothing.

Q. On March 15th, you attended a trial the second time at Thomasville; $10, does that include your expenses, loss of time and horse and team? A. Yes, sir.

Q. Trip of James Murphy being witness to prove the height of some boxes. That was your instructions to prove the height of boxes, $2.00. Is that a reasonable fee? A. Yes, sir.

Q. To cash paid for notary public for approving affidavit, 50 cents? A. Yes, sir.

152 Q. You paid that of your own money? A. Yes, sir.

Q. On April 10, third trip to Thomasville, for the trial of the same lot, 384, $10.00, was that? A. Yes, sir.

Q. You have for general services rendered for attending to returning lots of land 383, 384, 354, 345, 437, guarding against trespassers, for 12 years, you make your services about $40 or $50 a

year, is that reasonable compensation for the work you did? A. Yes, sir; I think so.

Q. Did you ever hear Mrs. Jennie L. Graves say anything about whether she owned lot 353 or not. A. After the suit here it came out her claiming it in Thomasville at the Mitchell House.

Q. What did she say? A. She said she was going to enter suit against it, for Thompson sold it, he had no right to sell it.

Mr. ERWIN: We desire to defer the cross-examination of Mr. McMullen a little. If you have any other witnesses, we can finish with them and take up the cross-examination a little later.

Q. Do you know anything about the possession of lot 353? A. I know about how long the house has been there, somewheres about it, but I do not know anything about the lines nor how it lays, nor whose possession it was on.

Q. Do you know whether it has been occupied, or any one lived there? A. I have not passed there but what somebody cultivated it or lived on it once.

Cross-examination:

Q. You mean for your life? A. I mean for the last several years. I have passed there when there was not a stick cut in them woods.

Q. How long ago? A. Seven or eight years.

Q. The house has been here seven or eight years? A. I think the house has been there longer. Old man Isham Haney built the house there.

Q. How long ago? A. 12 or 14 years ago.

Q. How long did he live there? A. I could not tell you exactly. My understanding was when the old man built the house he thought it was built on lot 352.

Q. About how long did he live there in that place? A. He lived there some two or three years.

153 Q. Then he sold to Johnson? A. No, sir; it strikes me he sold to Bob Burden; I think he did.

Q. Robert Burden? A. Yes, sir.

Q. And then Burden sold? A. That is 352 that he sold. No, he claimed, Haney did not claim 353 at all.

Q. The house just encroached over the line? A. That is my understanding. Bowers came and had the land run out and he took his house.

Cross-examination.

For cross-examination of this witness see page —.

G. A. HORKANS, direct, for defendant.

(Examined by Mr. PEARSALL:)

Q. Have you been dealing in timber lands in Colquitt County? A. Yes, sir.

Q. For how long? A. Twelve or fifteen years.

Q. In what capacity were you dealing in them, as owner? A. Yes, sir; as owner.

Q. You are a turpentine operator? A. Yes, sir.

Q. Are you familiar with what we call turpentine privileges on this land in this country? A. I think I ought to be.

Q. What would you consider now, Mr. Horkans, a fair value for the turpentine privileges on land in this county? A. Present prices?

Q. Yes? A. Where close to the railroad it ought to be worth $2.25 to $2.50 an acre, according to the timber.

Q. Off from the railroad? A. Off from the railroad it is worth less.

Q. How long have you been a turpentine operator? A. Some sixteen or eighteen years.

Q. You deal in saw mill timber? A. Yes, sir.

Q. Have you sold any recently? A. Yes, sir.

Q. What is the present value of saw mill timber in this county? A. Close to the railroad it is worth from $2.50 to $3 an acre.

Q. Off from the railroad? A. It is worth less.

Q. Would the value depend, Mr. Horkans, upon whether or not you could get enough to establish what we call a "location" or not? A. Yes, sir.

Q. One tract of land without others with it would not be
154 worth so much, would it? A. No, sir; where you can get considerable of it, several thousand acres, it is worth more than a detached body would be.

Q. What was it worth 18 months ago; was it worth the price you stated it is worth now? A. Yes, sir.

Q. Worth more or less? A. It was less.

Q. How much less? A. Timber sold 18 months ago—saw mill timber was worth about $1.50 an acre.

Q. Turpentine? A. Turpentine, $1.75.

Q. What is the present value of the land after timber privileges is out? A. That depends on the quality of the land.

Q. The average land in this county, what would you say? A. I suppose $1.50 an acre.

Q. You own considerable land in this county? A. Yes, sir.

Q. Was it worth so much as that 18 months ago? A. I think so.

Q. The land? A. Yes, sir.

Cross-examination.

(Mr. Erwin:)

Q. You say average lands were worth $1.50 after turpentine and timber have been taken off? A. Yes, sir.

Q. Now Moultrie is a thriving town, isn't it? A. Yes, sir.

Q. A growing town? A. Yes, sir.

Q. Lands near Moultrie are worth a great deal more than average land through the county? A. No, sir; I don't suppose they are.

Q. Lands around the suburbs are not worth more than those at a distance? A. There is very little land that is for *for* agricultural lands near Moultrie.

Q. But those that are suitable? A. I don't think it is. I think

land is higher in the western part of the county than what it is close to Moultrie.

Q. Lands worth $8 or $10 an acre over in the western part of the county? A. No, sir.

Q. What are they worth there, good lands over there? A. In the woods, without improvements?

Q. Yes? A. Farm lands, I would consider about $2 an acre, a fair price for it.

Q. Well, your particular business is turpentine? A. Yes, sir.

Q. And you buy lands? A. Yes, sir.

155 Q. You don't sell them very much? A. Yes, sir; I sell some.

Q. Selling land that has got the turpentine and timber on it? A. No, sir; I sell some of that too, and lease it.

Q. But in the main you are cultivating that yourself; that is your business? A. No, sir; I have leased several lots of land I did not cultivate myself.

Q. The biggest part of your work is in buying that class of land? A. Yes, sir.

Q. Buying them as cheap as you can get them? A. Yes, sir.

J. B. NORMAN, JR., called for the defendant, duly sworn, testified:

Direct.

(Mr. PEARSALL:)

Q. Where were you born, Mr. Norman? A. Supposed to be in this county now. Ten miles from here.

Q. What is your age? A. 48.

Q. Have you ever held any official position in this county? A. Yes, sir; I have been all the way from coroner to senator.

Q. Have you ever dealt in timber lands, timber, in this county? A. Yes, sir.

Q. Have you ever represented any non-resident land owners in this county, who owned land in this county? A. Yes, sir; I have represented some.

Q. Was it considered to be worth anything to represent a non-resident land owner in this county? A. Considerable trouble. Of course, it is worth something for a man's time.

Q. It was worth something to represent them? A. Yes, it is worth something, of course.

Q. What is saw mill timber worth in the county now, Mr. Norman? A. That depends on circumstances, from $1 to $3 an acre, according to circumstances and the timber.

Q. It depends somewhat upon the quantity you can get, wouldn't it? A. Yes, that is what I say.

Q. One lot of land would not be so valuable as ten lots, would it? A. That is what I said, according to the quantity of the timber, and the character and the way it lies to the railroad. Some worth $1 and some $3. Some more right on the railroad, good timber.

Q. Is saw mill timber worth as much now as it was 18 months

ago? A. No, sir; it is not worth as much now. There are
156 not the buyers now. It will not bring the same price.

Q. You have been a turpentine operator, have you not? A. Yes, sir.

Q. What are turpentine privileges worth now? A. It depends on the timber. It is worth $250 to $300 a crop; from $1 to $2 an acre, dependent on the land.

Q. Is that at the present time higher or lower than it was 18 months ago. A. I suppose now and 18 months ago about the same. It was worth more.

Q. What is the land worth after the timber privilege has been sold? A. Some lands are worth more than that; some worth 50 per cent. of what it was before, but I usually count land as worth about one-third as a rule, though the timber privileges are both ready sale, while there is no ready sale for the land.

Q. Is the land near Moultrie fit for farming purposes worth as much as it is in the western part of the county, right in a mile or two miles or three miles of Moultrie? A. I do not think land around Moultrie is as good for farming purposes as it is off. That is my idea about it. As a rule, the western part of the county is the best part of the land we have.

Q. It is worth more than land near Moultrie for farming purposes? A. Yes, sir.

Cross-examination.

(Mr. ERWIN:)

Q. What is your business? A. I claim my business to be farming. I am in the naval stores business, saw mill and railroad business, but I was raised on a farm, and I stand by them. I live ten miles from Moultrie.

Q. Are you in the saw mill business now? A. Yes, sir.

Redirect examination.

(Mr. PEARSALL:)

Q. Do you know anything about whether Mr. McMullen represented Mrs. Graves in this county or not, in looking after the land? A. I know he had been representing them more or less. The last two or three years I have not heard about it. Five or six or seven years ago when I first commenced buying lands, looking over the land of the county, I handled a heap of land in this county and timber off of several lots, I found out he was representing Mrs. Graves, that he represented them for her as agent.

157 Q. Do you know the character of Mr. McMullen? A. Yes, sir; I have known him ever since I can remember.

Q. What is that character? Have you ever heard anything derogatory of his character. A. Not a thing. He is a hard-working honest man, is all I ever heard of him.

Mr. ERWIN: Do you consider Mr. McMullen impeached any way.

Mr. PEARSALL: I think the logical result of the allegations in your bill would question his honesty in pretending to represent par-

ties and playing double with them. I think it would be well enough to question Mr. Norman in regard to that.

Q. You can state what you know of his character, if you have heard anything? A. Mr. McMullen has been a poor, all his life, so far as I know, honest, hard working man. He does not bother anybody. When he had business to attend to for others, he would sometimes make himself obnoxious about that business if you fooled with him.

Q. Never been any suspicions about his dealings in land? A. No, sir; none at all.

Cross-examination.

(Mr. ERWIN:)

Q. Did these complainants, the Graves, have a suit against you about these lands? A. No, sir; there has been no suit between me and the Graves.

Q. One of your brothers? A. No, sir.

Q. Phillip Norman, who was he? A. He is Phillip Norman, lives on Indian Creek; he is just Phillip Norman. He is no brother or cousin of mine. He may be third or fourth cousin to me. He is way off some wheres. He is not my brother nor cousin. I am not able to trace the relationship. It is said his father and my father were some relatives, what they were I could not tell you.

Examined by Mr. HANSELL:

Q. To what extent have you dealt in lands? A. I do not know. I think I have handled about half the timber lands in this county.

Q. Bought and sold both? A. Yes, sir; turpentine and saw milling and then buying lands for other people and buying up locations. I think I have had something to do with half of the lots of land in this county.

158 Q. About how much did you buy for the Pinopolis Co.? A. I bought timber for them to the amount of 70,000 or 80,000 acres.

(By Mr. ERWIN:)

Q. How long ago was that? A. I suppose I commenced in '94 for them. It might have been '95. It has been 5 or 6 years ago.

Q. You are still with them, you mean? A. Yes, I am still with them.

J. F. COOPER, called for the defendant, duly sworn, testified:

Direct.

(Mr. PEARSALL:)

Q. How long have you lived in Colquitt County, Mr. Cooper? A. Since '70.

Q. Are you familiar with the lands in this county? A. Yes, sir.

Q. Are you familiar with the necessity for non-residents to have

resident agents to look after their wild lands in this county? A. Yes, sir.

Q. It is usually necessary? A. It is generally necessary, yes, sir.

Q. It is worth something to represent non-residents. A. It certainly is; yes, sir.

Q. Usually the contest over these lands and the possession of them by resident agents is generally against his neighbor? A. Very often it is.

Q. It is not a very pleasant position? A. It is a very unpleasant position.

Q. I believe you have represented non-resident clients in this county? A. I have.

Q. You are always paid something for your services, are you not? **A. Yes, sir.**

Q. Do you know anything about Mr. McMullen's representing Mrs. Graves in this county about their timber lands? A. Yes, sir.

Q. So far as you know, he has discharged his relations with them? A. He certainly has.

Q. Do you know anything as to the possession of lot 353 in the 8th district of this county? A. Yes, sir.

159 Q. Do you know how long it has been in possession? A. There is a house and improvements on that half lot of land when I first came to Moultrie, when I lived in the lower part of the county. I cannot tell exactly what year it was now, but it has been at least 25 years ago.

Q. When was Crawford's still, Ashburn's still, built on this lot 353; do you remember that, when they took possession for turpentining? A. In '92 or 3.

Q. In '92 or 3? A. Yes, sir.

Q. Since that time it has been in continual possession? A. Yes, sir.

Q. Ten or twelve houses on it, something like that? A. Yes, sir; there is a turpentine location.

Q. Families live on it there in open, patent, peaceable possession? A. Yes, sir.

Q. There is four and a half acres up in the northeast or northwest corner? A. That is where the house was built 25 years ago. It has been years ago.

Q. That patch, tract up there, has always been cultivated? A. It has always been cultivated.

Q. I believe it is cultivated now? A. Cultivated now.

Q. Mr. Moore lived on there? A. Yes, sir.

Q. As tenant of Mr. Ashburn? A. That portion of it, yes, sir.

Cross-examination.

(Mr. ERWIN:)

Q. Mr. Cooper, are you related to Mr. C. H. Autrey? A. No, sir.

Q. You put up that still on that lot 353, did you not? A. Mr. Autrey did.

Q. Did you run it? A. No, sir.

Q. What connection did you have with that lot 353 in there? A.

Yes, sir; I assisted Mr. Autrey in getting the location there. Bought that half lot of land, that southwest half, from Mr. Blanton for Mr. Autrey.

Q. You and Mr. Autrey arranged for Mr. Blanton to buy it from Mr. Bowers? A. Yes, sir.

Q. You and Mr. Autrey furnished the money to Mr. Blanton to buy it? A. Mr. Blanton. We bought land from Mr. Blanton, that half of lot of land.

Q. Wasn't it understood when you bought it that Mr. Blanton was to buy it for Mr. Autrey? A. I don't know whether that was understood with Mr. Blanton or not; but I was buying it for Mr. Autrey.

160 Q. You were buying it for Mr. Autrey? A. Yes, sir.

Q. And then you bought Mr. Blanton out? A. I could not buy it from Dr. Bower.

Q. Mr. Autrey furnished the money? A. He furnished the money to me or to Mr. Blanton, I think to me.

Q. It was furnished to Mr. Blanton to buy it. A. I think he bought the land from Bower, but I was in the deal. I was buying for Mr. Autrey.

Q. After you bought the land you located the turpentine still there? A. Yes, sir.

Q. And had the station named for you, "Cooper"? A. The station was put right there. I did not have it named for me, but it was named for me.

Q. Whether you did it I did not mean to imply, I meant to say it was named Cooper? A. It was named Cooper.

Q. And that was done after Mr. Blanton transferred the property to Mr. Autrey? A. Yes, sir.

Q. And then you put up a still after Mr. Blanton made a deed to Mr. Autrey, you put up a still there? A. Yes,sir.

Q. Which Autrey was that? A. C. H. Autrey, I think.

Q. Then Mr. C. H. Autrey deeded it to Mr. D. A. Autrey, didn't he, transfer it to Mr. D. A. Autrey. A. D. A. Autrey, yes, sir.

Q. Are they brothers? A. Yes, sir; they are brothers, said to be.

Q. That was the south half of the lot? A. Yes, sir; that is the south half.

Q. Which one of those Autreys put up the still, D. A. or C. H.? A. My recollection is C.. H. Autrey put up the still. That is my recollection.

Q. Look at this diagram Map Exhibit I made by Mr. Austin. It is located about in the position indicated on the map with the letters H. T. Crawford's still? A. Yes, sir; just about, perhaps a little further west.

Q. The station was put there when? A. I don't recollect?

Q. When was the road built? A. After the road was built that they made the station there, I think, but I don't recollect.

Q. Was the still there before the road was put there? A. The Georgia Northern road. I do not recollect. It was very near together.

Q. Wasn't the road built there and the still put there at that time, located right at the station, put on the road? A. I do not really

know. I know it was about the same time the road was put
161 through there, but I do not know whether it was first. I do not know which was first.

Q. About the same time, you think? A. Yes, sir; somewheres about the same time.

Q. You speak about a certain house being on lot 353, you allude to that house in the northeast corner of the lot and that little clearing between the public road and the corner of the lot? A. Yes, sir; taking the house in, yes, sir.

Q. That is the amount of cultivation and clearing and house belonging on that lot to which you refer? A. Yes, sir.

Q. And the other was about the still, put there about the time the road was built there? A. Yes, sir; about the time.

Q. Now, Mr. Cooper, you wrote to Mrs. Graves or her daughters several times about purchasing some of these lands, didn't you? A. Yes, sir; I never wrote to them in regard to purchasing that lot though.

Q. Well, some of the others? A. There was one adjoining it.

Q. 384? A. 384.

Q. 383? A. 383, 354, perhaps, those lots were returned at that time by Mr. McMullen as her agent; 353 was not returned as her property.

Mr. Erwin: I move to rule that out. That is a matter we can prove by record, if it is necessary to be proved.

* * * * * * *

James W. Groover, called for the complainants, duly sworn, testified:

Direct.

(By Mr. Erwin:)

Q. You are clerk of the Superior Court of Thomas County? A. Yes, sir.

Q. How long have you been clerk? A. About 24 years. Will be in January.

Q. Have you in your office the execution dockets on which was recorded in your regular course, the executions issued on judgments obtained in the Superior Court of Thomas County, commencing from 1853 and running up through 1861? A. Yes, sir.

162 Q. Look at this paper purporting to be an execution in favor of Wright Betts & Company *vs.* Joel S. Graves for $1015.03 principal, with certain credits on it, and purporting to be issued from Thomas Superior Court, June term, 1857, as for November term, 1853. I will ask you whether or not you have examined the execution dockets of your office covering the entire period from 1853 the purported date of the verdict in that case up to 1861, and whether you find there entered anywhere on that execution docket the issuance of a *fi. fa.* corresponding to that? A. Yes, I have examined and I cannot find any.

Q. You have those execution dockets here present in Court? A. Yes, sir.

Q. These three books covering that period? A. Yes, sir.

Q. Did you also examine after 1861, to see whether there was any return of such execution issued on your docket? You and Mr. Callaway made that examination? A. Yes, sir.

Q. You did not find *at* [it]? A. No, sir. We run through together.

Q. There is an entry on your complete record book G, pages 247 and 248, of the suit and of the entry of judgment, November 30th, 1853, is there not? A. Yes, sir. Petition and copy of notes and service.

Q. And the entry on that in the words, "Received March 13, 1854, on the within judgment, the sum of $270.86. T. B. Davis, Attorney." That is entered there right under the judgment? A. Yes, sir.

Q. But there is no entry so far as you have been able to find on the execution docket of any entry of the *fi. fa.* issued on that judgment? A. No, sir.

Q. Referring to this execution docket commencing November term, 1954, Execution 44 against Joel S. Graves, for $318.69 principal and some interest and cost. You find an entry of that execution, and an entry on your books, February 8, 1854, returned to office satisfied in full and cost settled between officers? You find that entry on that one? A. Yes, sir.

Mr. WILKES: We object to that on the ground that that execution docket, what it shows there, purports to disclose the record of a different suit, other than the one relating to the case under consideration, and the execution in evidence. We object to it because it is irrelevant, illegal and inadmissible in this case.

163 Mr. ERWIN: We submit that counsel have undertaken to prove by Judge Hansell that he had other suits about that time against Joel S. Graves and it is very material evidence to show if there were other suits that they were satisfied.

Q. Look at your execution docket here, June term, 1856, execution, No. 2, against Joel Graves and others——

Mr. WILKES: That was in the other case. That was not responsive to my question. We did not intend to show that.

Mr. ERWIN: Mr. Hansell was sworn in one case and that was this case, and you put that question to him.

Mr. WILKES: We object to that evidence upon the same grounds as urged in the other objection, that it is illegal, irrelevant and inadmissible, and discloses records of another case and does not touch the case or testimony under consideration, and because it shows that Joel S. Graves settled another debt, but fails to disclose any payment, credit on record or anything in reference to the execution introduced and tendered in evidence.

Q. Referring to that *fi. fa.* issued June term, 1856, *fi. fa.* No. 2 against Joel S. Graves, $419.88, you find under the same year, September 18th, returned to office satisfied in full and clerk's cost paid, do you not? A. Yes, sir.

Q. That is the entry on the execution docket? A. Yes, sir.

Q. Referring to your execution docket under December term, 1858, the suit of Edward Cowing *vs.* Joel S. Graves and Eli Graves, Thomas County, you find *fi. fa.* there for $438.70, do you not? A. Yes, sir.

Q. And this entry, "Deliver to W. F. Sanford, February 11, 1859. Returned to office, no property, October 15, 1859. You find that entry? A. Yes, sir.

Mr. WILKES: Same objections, upon the same grounds and upon the additional ground that the question as put by plaintiffs' counsel is leading.

164 Q. This book which is now before you, which is Book Record of Deeds E, May, 1846, to November, 1851, is that one of the records of the clerk's office, Superior Court of Thomas County? A. Yes, sir.

Q. The original records. A. Yes, sir.

Q. Look at this original deed which I now hand you, purporting to be Eli Graves' deed of conveyance to Joel S. Graves, dated March 22, 1848, and purporting to have been recorded in clerk's office, Superior Court of Thomas County, the 15th day of March, 1849, in Book E, page 371. Do you find that this deed which I now hand you is recorded there on that original Book E? A. Yes, sir.

Deed marked "Exhibit No. 4."

Mr. PEARSALL: Note our objection. That is not the proper way to prove the contents of a record, and of any deed recorded. The certified copy from the clerk under his seal would be the proper manner, and not by his testimony in this way.

Q. Note that the certificate of the then clerk, J. G. Dekle, is entered on the original deed and is itself evidence. The deed on your record exactly corresponds, does it not? A. It looks so; that is, the dates, parties and when recorded.

Mr. PEARSALL: Note our same objection to that question as the previous.

Q. The signature of Mr. Dekle on this original Record F is at the bottom of the entry of the deed? A. Yes, sir.

Q. Original date of entry? A. Yes, sir.

Q. How does the handwriting compare with the handwriting on this original deed? A. It looks like it; corresponds pretty well.

Q. It looks the same, doesn't it? A. Yes, I would take it to be the same.

Q. Look at this original document, purporting to be a deed dated June 8, 1855, from Joel S. Graves to Cyrus S. Graves. Do you find the deed entered on your original book F or record book F, Thomas County, on page 677, corresponding to that deed, Exhibit 3? A. Yes, sir; that is the same date there as that, and same parties.

Q. I desire you to compare that deed carefully with the one
165 in your hand. You will find in the original deed which I hand you, about five or six lines from the bottom, in a different ink——

Mr. PEARSALL: I object.

Mr. WILKES: I object on the part of the defendant- Holmes and Hall, upon the ground that the question is leading, illegal and irrelevant.

Q. (Preceding question)—Certain words, "Sold to Dr. Bower," in blue ink there. I want you to compare the deeds on your book here with this original deed and see whether they exactly correspond, with the exception of the words to which I call your attention there in purple ink. Now, Mr. Groover, having compared those deeds, that is to say, the original deed which I hand you with the entry on your book, state whether or not the record is an exact copy of the original deed which I now hand you with the exception of the words in purple ink after lot 353, the words, "sold to Dr. Bowers?" A. Yes, sir; that is all right except that.

Q. Then those words in purple ink are not in the deed as recorded on Book F, page 377? A. No, sir.

Q. Otherwise they correspond to the entry on the deed of the date of record, June 11, 1855, and the name of the clerk recording also correspond, do they not, and the writing apparently the same? The clerk signing is the same? A. Yes, sir.

Mr. WILKES: We object to that deed upon the ground, first, that it was made by Joel S. Graves to Cyrus Graves while the judgment was yet pending in Thomas Superior Court against Joel S. Graves, and upon the further ground that it is a family transaction and the conveyance was made for the purpose of avoiding the payment of the debt upon which the execution previously tendered was founded. We object to it because it is a fraudulent conveyance made to hinder and delay the collection of a debt, having been conveyed according to the deed introduced by complainants' counsel in 1855, the judgment being obtained in Thomas Superior Court in 1853, and under the old law that existed at that time, the judgment alone bound all the property of the defendant, and this conveyance, as shown and offered by complainants' counsel, was evidently made by Joel S. Graves to Cyrus Graves to avoid the payment of that debt.

166 Mr. PEARSALL: We object to the evidence of Mr. Groover as to the contents of the record of deeds of Thomas Superior Court, on the ground that a certified copy would be the highest and best evidence. We object to it on the ground that there was no legal record of this deed to which he testifies, because it was not witnessed by an officer authorized by law to witness deeds for admission to record, and the probate upon which it was admitted to record is insufficient, on the ground that it does not appear that the deed was delivered, nor does the probate state that the deed was delivered, and the purported record was illegal, and he cannot go into the contents of it. We object to the evidence as to what appears on this deed on the ground that they are tending to impeach the validity of their own deed.

Q. Mr. Groover, look on your record F, the same record on which

that deed to Cyrus Graves from Joel Graves is recorded, look on page 669 of that record; you find recorded there a deed from James Connell to Joshua B. Everett, of Thomas County, do you not? A. Yes, sir.

Q. That deed is witnessed by whom, as shown on the record? A. Jonah J. Everett and Torquil McAuley, J. P.

Q. And the deed is recorded by Jared Everett, Clerk of the Superior Court, isn't it? A. Yes, sir.

Q. Torquil McAuley, J. P.—that is the same name as the one who signed as a witness to this deed of Joel S. Graves and Cyrus Graves, isn't it? A. Same name.

Mr. PEARSALL: We object to that as irrelevant and immaterial.

Q. Look at this deed in the same book, recorded page 688, purporting to be from Aaron Daniel to John P. Lyons, of Thomas County, purporting to be witnessed by A. T. McIntyre and Torquil McAuley, J. P.; a deed entered June 20, 1855, dated the 6th day of March, 1855, that purports to be witnessed by the same judicial officer as the others? A. Yes, sir.

Mr. PEARSALL: Same objection.

Mr. ERWIN: We will have Mr. Talley mark for identification those two deeds. We did not formally tender them in evi-
167 dence, because we propose to offer additional evidence in reference to them later on.

Cross-examination.

(Mr. WILKES:)

Q. You are clerk of this Court, and have been for many years? A. Yes, sir.

Q. When did you commence searching for the record of the execution referred to a few moments ago? A. I reckon it has been three or four months ago. Four or five months ago.

Q. You commenced to hunt for the record of this *fi. fa.* now in Court here? A. Yes, sir.

Q. What was the result of your search? A. I could not find it on the docket, sir.

Q. Did you get up all the dockets of the County, *fi. fa.* dockets? A. No, I did not get them all up.

Q. I mean back numbers? A. Yes, sir; we went from about '53 to '58 or '60, somewhere along there, about the time they said the suit and judgment was found.

Q. You say you could not find any entry of this *fi. fa.?* A. No, sir; not on the docket; the execution docket.

Q. Are you prepared to swear that the *fi. fa.* was not entered on the execution docket at that time? A. No, sir.

Q. When was Colquitt County made, Mr. Groover? A. I think it was about '56, they tell me, I don't know, or '57.

Q. Mr. Groover, will you look at this book G, record of the Superior Court, on page —, and state whether or not this was entered, these various entries, the record of the petition, by whom brought,

and the copy of the note sued on, acknowledgment of service, when filed in office, and verdict and judgment and credit upon the same, and whether or not the petition and the various entries were made G, copy of the note from Joel S. Graves to Wright Betts and Company against Joel S. Graves. That is the petition.

Q. Who brought that petition, Mr. Groover, what attorney? A. T. B. Davis, plaintiffs' attorney.

Q. That appears of record? A. Yes, sir.

Q. What is the next entry? A. Copy of the note, 348, Book G, copy of the note from Joel S. Graves to Wright Betts adn Company.

168 Q. What is the amount of that note? A. $1015.03.

Q. When was that entered? A. April 28, 1853. No, that is the date of the note.

Q. What is the next entry? A. Acknowledgment of service by Joel S. Graves, May 3, 1853.

Q. What is the next entry? A. Filed in office May 3, 1853; Jared Everitt, Clerk.

Q. What is the next entry? A. Next entry is verdict of jury.

Q. Read that to the examiner? A. "We, the jury, find for the plaintiff the sum of $1015.03, with interest and costs of suit. November term, 1853. James G. McCall, Foreman."

Q. What is the next? A. The judgment.

Q. Read that to the examiner. A. "Whereupon it is considered and adjudged by the Court that the plaintiffs do recover of and from the defendants the sum of $1015.03 for his principal sum, and the further sum of $41.44 for interest to the 28th day of November, 1853, with interest on the principal sum until paid, and the further sum of — for his cost and charges in and about this said suit laid out and expended, etc., and the defendant to be in mercy, etc. This November 30, 1853. T. B. Davis, plaintiff's attorney."

Q. The next entry, Mr. Groover? A. Looks like a credit.

Q. Read that to the examiner? A. Received March 13, 1854, on the within judgment the sum of $270.86. T. B. Davis, Attorney." "Entered September 12, 1854. A. P. Perham, Deputy Clerk S. C."

Q. Now, Mr. Groover, doesn't it appear that all of the petition, note, the acknowledgment of service, filing in office, and all these entries were entered here on September 12, 1854? A. Yes, sir.

Q. That appears there by entry of A. P. Perham, Deputy Clerk, doesn't it? A. Yes, sir.

Q. It appears that that recording was done after the verdict and judgment was recovered on that suit? A. Yes, sir.

Q. I mean the record? A. Yes, sir.

Q. Mr. Groover, are you acquainted with the handwriting of Jared Everett? I will ask you who was the first clerk of the Court of Thomas County? A. I do not know that I could tell you.

Q. You do not remember who the first clerk was? A. No, sir; it seems to me like his name was Ferguson from the old records.

169 Q. Do you remember how many years Jared Everitt served as clerk? A. No, sir; I do not.

Q. From the records in your office, are you familiar with his handwriting? A. Well, I have seen it enough here.

Q. Look at that *fi. fa.*, Mr. Groover, and state whether or not it looks like his handwriting? A. It looks pretty much like it. Yes, sir; it looks like these records here of his.

Q. This *fi. fa.* in question of Wright Betts & Co. *vs.* Joel S. Graves, for $1015.03, issued before Peter E. Love, Judge Superior Court of Thomas County, on the 23rd day of October, 1857?

Mr. ERWIN: I object to that statement that it was issued. I object to that statement of its being issued before Judge Love, as there is no evidence whatever of Judge Love ever having anything to do with it. If you correctly refer to the *fi. fa.* as being expressed as attested in the name of the Judge, like all clerical *fi. fas.* are, I have no objection, if you use the expression as identification of the paper.

Q. Would you read the body of that *fi. fa.* to the examiner?

Mr. ERWIN: I object to the proof of the *fi. fa.* in that way. If you desire to have the examiner copy the *fi. fa.*, you can have it copied, but just to read off a paper, put it in the record by oral testimony, is improper, because it is a paper which can get in the record, not like a Court record here which we cannot take away.

Mr. WILKES: Didn't you do that just now?

Mr. WILKES: It is not like a Court record which we cannot take away, but this paper which you are reading from is a paper which you have offered, and it shows for itself. We cannot take the original Court records of Thomas County away from here, and therefore, for the purpose of comparing the entry on the original entry, it is all right.

Q. Can you identify that handwriting, Mr. Groover, as the handwriting of Jared Everitt from the knowledge of his signature
170 appearing upon the records of your office? A. It looks very much like where he signed his records. I do not know as I know. I never seen none of his writings only on the records. It looks very much like that which is on his records.

Q. What is the date of that *fi. fa.?* A. 23 day of October, 1857.

Q. You say Colquitt County was not made until about February 25, 1856? A. Yes, sir.

Q. Made in 1856? A. Yes, sir.

Q. After that County was made, did they continue to record *fi. fas.* down in Thomas when issued from here? A. I do not know, sir. I would not think they would, though.

Mr. ERWIN: I object to what the witness states, he does not know, and what he thought they might or might not do, as being improper, illegal and incompetent evidence. I move to strike it out.

Q. Look at that *fi. fa.*, Mr. Groover, and see if there is an entry of record by any clerk of any Court?

Mr. ERWIN: I object to that question on the ground that he must first say that he knows the signature of the party purporting to have made the particular entry on the *fi. fa.*, that he knows that he was

clerk at that time and be able to identify the entry. So far as there being an entry on the *fi. fa.* purporting to be in the name of the clerk, that will show from the paper itself, which has been offered by counsel, better than any witness can testify to it.

Q. What do you find there, Mr. Groover? A. "State of Georgia, Colquitt County. This *fi. fa.* is recorded in the clerk's office of said county this April 3, 1861. Amos Turner, Clerk."

Q. Did you know Amos Turner? A. I did not.

Q. You did not know his signature or writing? A. No, sir.

Q. Then you state that you cannot swear that this *fi. fa.* is not recorded in the records of Thomas Superior Court? A. No, sir; I have looked for it.

Q. And you failed to find it? A. Yes, sir; I failed to find it.

Q. Mr. Groover, you testified awhile ago you found a number of executions here, and identified them here on the docket as
171 satisfied, Execution Docket of Thomas Superior Court in 1858, that they were satisfied, those that you went over? A. Yes, sir.

Q. What do you find on this docket here, Edward Cowing *vs.* J. S. Graves? A. Returned to office, no property, August 19, 1859.

Q. What is the principal of that?

A. $438.07.

Q. What is the interest? A. $42.64.

Q. What do you find here in this execution docket, December term, 1859, docket No. 31; read out what you find there? A. William G. Lane & Co. *vs.* Eli Graves, Joel S. Graves and John McKinnon, Sr.

Q. What is the amount of that *fi. fa.*? A. $310.39.

Q. What entry do you find? A. Returned to office March 3, 1860, with the transfer of the same to John McKinnon, Sr.

Q. You do not find it satisfied, any entry where it has been paid? A. No, sir.

Redirect examination:

Q. This execution 31 is December, 1859, that you have just referred to as being against Eli Graves, Joel S. Graves and John McKinnon, Sr. You see an entry there on January 25th, 1860, which was a transfer to John McKinnon, Sr.? A. Yes, sir.

Q. He was the same name as the one of the persons against whom the judgment was entered? —. It looks like he was one of the defendants.

Q. Your testimony in regard to the *fi. fas.* which were entered satisfied were *fi. fas.* running back from 1853 through 1857? A. Yes, sir.

Q. And the one not satisfied that Mr. Wilkes called your attention to just now, *nulla bona* return, was in 1859? A. Yes, sir.

Q. This judgment document contains the number of each *fi. fa.* in the margin, doesn't it? A. Yes, sir.

Q. Are not all *fi. fas.* issued from the clerk's office in regular course numbered according to the docket number? A. Yes, sir.

Q. Now, look at this *fi. fa.* that you have testified about in favor of Wright Betts and Co., purporting to be issued in 1857, for June term, 1853; state whether that has got any docket number endorsed on that showing the number of the *fi. fa.*? A. No, sir; I do not see any.

172 Q. No entry of that sort? A. I do not see any number.

Mr. WILKES: I object to the question asked this witness in regard to all *fi. fas.* being numbered, because if a *fi. fa.* should not be numbered according to that question, he seeks to show that all *fi. fas.* have to be numbered, and if one should be left unnumbered it would void it, that that question is illegal, and that it seeks to draw a conclusion from the witness, and not to establish any fact.

Mr. Groover, you testified in answer to Mr. Wilkes' question that you would not swear that such a *fi. fa.* was not entered on the execution docket between 1853 and 1861, inclusive. Do you have these execution dockets here? A. Yes, sir.

Q. Covering the whole period right straight through? A. Yes, sir.

Q. You have examined them carefully and you do not find any such entry on them? A. I cannot find any.

Q. That is all a man can say, is to say that he has searched diligently through the record and cannot find any such entry there? A. Yes, sir.

Crossexamination.

(Mr. WILKES:)

Q. How many times have you looked at the various execution dockets of the county and made this search for this special *fi. fa.* and some entry of it? A. I think me and Mr. Callaway have ran through that together, and him by himself and me by myself, together I think we ran through it three times, two or three, and he has looked himself, I reckon, he told me as much, he wanted me to be satisfied.

Q. Who is Mr. Callaway, the complainants counsel? A. That gentleman there, (Mr. M. P. Callaway.)

Q. Mr. Groover, isn't it true that you and Mr. Callaway had also hunted for further record in regard to this same suit of Wright, Betts and Company, *vs.* Joel S. Graves? A. I don't think I ever looked for anything.

Q. Didn't Mr. Callaway state in your presence this morning, in your office, that we would not find anything except the verdict of the jury, that he had searched diligently in your office three times and you had helped him? A. Yes, sir.

173 Mr. CALLAWAY: I beg the gentleman's pardon. I did not state with the assistance of Mr. Groover on that question there, but that I had looked through the minutes myself.

Q. Did you help him hunt Mr. Groover? A. I helped him to look on the execution docket.

Q. Did you search further for some record in regard to this petition, verdict and judgment? A. No, sir; I don't think I did. I looked for the record of that suit in the Superior Court not until this morning. They got to studying about it and you proposed that I hunt for it, and found it this morning. I do not think I ever examined the records of the Superior Court to see if it was there.

Q. Isn't it possible now that this *fi. fa.* may now be recorded upon one of these dockets and you have overlooked it? A. I do not see hardly how it can be. I have looked over them several times.

Q. Do you swear it could not be on them. A. I don't think it is there.

Q. What do you say. Do you swear it is not there? A. I believe I will swear it is not there from '54 to '60.

Q. From '54 to '60? A. Yes, sir.

Q. Do you swear that positively with the lights before you, that it is not on these execution dockets from '53 to '60? A. Yes, sir.

Q. But it might be on one this side of '60? A. Well, I do not think I have ever looked any further than that.

Q. You don't know whether it appears since '60 or not? A. No, sir; I sort of looked over that this morning, but did not look over it very particularly.

Q. Now, Mr. Groover, have you ever seen a *fi. fa.* issued from this County unnumbered? Can you remember one? A. No, sir; not that I know of.

Q. Look at this one good, Mr. Groover, and see if that had been numbered if the number perhaps might not have been rubbed out or worn out, in some of the corners. A. I cannot see any marks there, Judge, at all.

Q. I don't either. You do not see any number? A. No, sir.

Q. Now, you see the corners of the execution are worn,
174 Mr. Groover. You observe it has been worn considerably?
A. They would not put it in the corner, Judge. They would put it along here. (In the middle.)

Q. The execution might possibly have been numbered and the number worn off; you cannot say? A. I do not think it has been numbered. It does not look like it. I cannot see any sign of it.

Redirect examination:

Q. I will ask you to look at your execution docket from '60 to see whether you find any entry of that *fi. fa.* on the execution docket.

(The witness examines the docket for some time.)

Mr. WILKES:

We are willing to relieve the clerk from '66 on.

Q. You have examined your dockets right straight through—after '59 through '60 and up to '66, and still you find no entry of the issue of such a *fi. fa.* on the execution docket? A. No, sir.

JOSEPH HANSELL MERRILL, called for the defendant, duly sworn, testified as follows:

Examined—direct:

(By Mr. PEARSALL:)

Q. What is your profession, Mr. Merrill? A. I am practicing law.
Q. What was your profession on the tenth day of November, 1898? A. Practicing law.
Q. What was the style of your firm? A. Hansell & Merrill.
Q. You were practicing law in the City of Thomasville at that date? A. Yes.
Q. Mr. Merrill, look at this paper, which I will ask the examiner to identify as Exhibit 5. State who wrote that? A. I did.
Q. Tell the circumstances under which it was written? A. Mr. H. T. Crawford, whose name appears in the statement, came to my office with some deeds to lot 383 in the 8th district of Colquitt County, and said he wanted me to buy the lot of land and wanted me
175 to examine the title and tell him whether it was safe for him to buy it.
Q. Did you examine the title? A. I did, the deeds he had. Two, I think it was, were made that day under orders from the Court. One of them, any way, under order of the Superior Court of Thomas County, by the administrator of the estate of A. T. McIntyre, Jr., I think.

Mr. ERWIN: I object to the testimony about a deed made under the order of the Superior Court, as the order itself is the best evidence.

A. I was only explaining the last line of the certificate. Of course, you gentlemen determine what you want in. I did not know whether you knew that was there.
Q. State whether a complete chain of title was submitted for your examination? A. It was, including the deeds made that day.
Q. From the State of Georgia into John McMullen, I believe? A. Well, a deed was made that day, I think, to Mr. Crawford.
Q. Was that before or after the examination, or was it made at the time? A. I think the deeds were prepared and that was part of what he had. I know I did see that deed.
Q. And that was your opinion? A. Yes, sir.
Q. That there was a complete chain of title? A. As set out here.
Q. You mean in the opinion that you gave?

Mr. ERWIN: I will ask the examiner to copy it.

(Copy.)

"Chas. P. Hansell. Jos. Hansell Merrill.

Hansell & Merrill, Law Offices.

THOMASVILLE, GEORGIA, 98/11/10.

We have examined the original deeds to lot of land No. 383 in 8" Dist. Colquitt County, Ga., bought this day by Mr. H. T. Crawford,

and find the chain complete from the State to him, which in our judgment gives him perfect title, though we have made no
176 examination of Colquitt County records for liens. Deeds made under orders of Court are all right.

HANSELL & MERRILL, *Att'ys.*

A. I would call attention to the opinion in the latter part "We have made no examination of Colquitt County records for liens," to let him understand that I, not being in Colquitt County, could not state about that or, of course, anything else that might be upon the record there, but that title that he had seemed to be a perfect chain of title and a good one, as stated.

Q. Had the appearance of being a genuine chain of title. A. Yes, that is what I thought about it.

Q. You have had considerable experience in examining titles in this part of the country? A. Yes, it has been a good large part of my business since I began the practice in 1884.

Q. And you approved this as a chain of title? A. Yes, sir.

Q. Mr. Merrill, examine this deed, which I will have the examiner identify Exhibit 6. A. This was brought to me in half dozen or more pieces. This purports to be a deed from Joel S. Graves to James Read, it looks like.

Q. Is there any peculiarity about the Read, could that be Redd, with a d in the place of a? A. Yes, sir; that is hard to tell. It might be Redd as well as Read. Read or Redd in one place, while in another it seems Read.

Q. State, Mr. Merrill, if you examined the paper and state if you glued the fragments together? A. It was in half a dozen pieces or more. I put these pieces on the thin-est paper I had in the office and pasted it down on it so as to keep it from being destroyed. I tried to be careful, too, not to obscure the entries on the back, but it was so badly torn it seems that I did not succeed very well at that. One of them is stuck over the entry very badly.

Q. What does the entry appear to be that is defaced? A. I have no recollection of reading that before I stuck it together, and I could only tell by what I see now, but anybody else could see as well "Georgia, Colquitt County." I have no recollection of reading it before sticking it together.

Q. What do you find on there? A. "Georgia, Colquitt County." I cannot make it out very well; "of the Superior," "said," "Co"—That much of county is there; "orded." I cannot see the balance of county there. This is "orded."

Q. The word that appears to be orded, see if it could not
177 be "recorded"? A. Yes, it is "orded," and it is torn off in front of the "o," and then I notice "ok" a little further as though it was the last of "book." I thought I saw the letter "V" on the back, as though it was "book V," but I could not be sure about that.

Q. I will ask you if you see the signature to this piece which you pasted on there, the signature? A. Yes, some day of something, William McLeon, clerk Superior Court.

Q. That appears to be the paper that you arranged? A. I am

sure this paper is the paper that was exhibited to me and that I stuck it together. I made that entry on the back at the time.

Q. You identify it by the paper that you pasted on there? A. The paper on which I pasted the deed, I wrote that on it, that is my handwriting, and I remember the deed. After you called my attention to Redd, I remember being worried over that some.

Q. Do you remember whether Mr. Crawford paid you as an attorney to make that examination? A. Yes, sir; he paid me. He paid me that day.

Q. Do you know the complainants in this case, Mrs. Graves and Minnie C. Graves and Ida J. Graves? A. Yes, I know them, the mother and two daughters.

Q. They had previously to that consulted with you as an attorney—previous to the time you made the examination. Subsequent to, after the time you made the examination? A. Some time afterwards. I never saw them until some time after that.

Mr. ERWIN: I object to any evidence from this witness of any consultations. I do not know what they were, but on general principles they are not admissible.

Q. I wanted to ask if he was employed by these complainants to represent them in any litigation? A. Only in one matter. One lot of their land was advertised for sale in Colquitt County on some regular sale day, and they came to my house the night before and employed me to get an order to prevent that sale, distinctly stating to me that they would not need me further as they had another attorney here who had represented them for years, and he was out of town was the occasion of their calling on me that night at my home.

Q. You did not prepare the order? A. I did draw an application and get an order for them to stop the sale.

178 Q. Examine these two papers and see if you know anything about them? A. No, sir; I do not. My partner, Capt. Hansell, helped Col. McIntyre some. He was the lawyer that the Graves referred to as having been retained by them. McIntyre is the lawyer who they told me had represented them always, to whom they expected to go to finish up the case I started that night in getting that injunction. Afterwards Capt. Hansell, who was my partner then, helped Col. McIntyre some in the case. And these papers are backed in his handwriting. I can see that.

Q. The papers you refer to are two affidavits? A. Yes, two affidavits of Ida J., Minnie C. Graves and Jennie L. Graves.

Cross-examination.

Mr. ERWIN:

Q. Mr. Merrill, when you made this examination for Mr. Crawford, I believe on the 10th day of November, 1898, wasn't it? A. Yes; that is right.

Q. The same day you gave this certificate? A. Yes, all done the same day.

Q. You say that Mr. H. T. Crawford brought into your office a

complete chain of title right down into him? A. That is my recollection.

Q. And paid you for making the examination? A. Yes, sir.

Q. This certificate here indicates that you did not go to Colquitt County to make that examination? A. I did not.

Q. The lands lay in Colquitt County? A. Yes.

Q. You did not charge Mr. Crawford such a price as you would have if you had gone to Colquitt County and examined the records to see whether there were any conflicting titles or liens? A. No, sir.

Q. Or whether there were any outstanding or conflicting titles or liens against the property? A. No, sir.

Q. Do you remember what he did pay you? A. Yes; I think it was $10. I am pretty clear it was. I would like to state this. Mr. Crawford came down with the McMullens. He arranged that day to get the land from the McIntyre estate and that he wanted that paper specially to send to Savannah with a draft to the people from whom he was getting the money to pay for the land.

Q. Well, now, then he came down with the McMullens, you mean John McMullen and William McMullen? A. Yes, the old one is named William, I think.

179 Q. The father of John? A. Yes, that is right.

Q. The two men came down together? A. I think they were both here, one of them here, I know.

Q. Didn't they both go into your office with Mr. Crawford at the time this examination was made? A. I think they were in there during the day. The other, perhaps, did not come with him at first.

Q. Wasn't Mr. Merrill, your examination limited to the simple fact as to whether or not the papers as shown in that chain of title were regular on their face? A. I do not think that is the proper view.

Mr. PEARSALL: Are you going into the contents of this writing?

Mr. ERWIN: I am not going into this certificate. I am asking whether or not his examination was not made and the price proportioned, the understanding was made between Mr. Crawford at that time, that your examination was limited to the fact that here was a chain of title, to see whether the papers on their face made a straight chain of title.

Mr. PEARSALL: I object to the question as to explaining a written instrument which is unambiguous, to vary the terms of a written instrument which expresses plainly the opinion that he did give.

A. The examination was of the papers brought to me and of the Court records of Thomas County applying to one of them made under an order from the Judge of the Superior Court in a matter that was pending, a suit that was pending, or bill, rather, pending about the A. T. MacIntyre, Jr., estate, to see what I could tell from the deeds brought to me and the examination of that thing to which I had access to the records. That is my recollection of all that I had.

Q. In that chain of title that was given to you to inspect there was this paper purporting to be a deed from Joel S. Graves to James Read dated the second day of November, 1852? That deed that you

spoke about just now having pasted something on, that was one of the links in the chain, wasn't it? A. Yes.

Q. You did not make any examination of the records, you just merely looked at that deed? A. That is right. I did not have access to the records, as I stated before.

180 Q. Look at this other deed from the examiner's files, one purporting to be a deed signed by James J. Read transferring certain lots to Joseph A. Shumake, 6th day of August, 1863, and purporting to be witnessed by J. J. Manning, W. B. Jackson and N. C. Munroe, Not. Pub. Was that one of the links in the chain that you examined? A. I think it was.

Q. Now, Mr. Merrill, you have before you there taken from the examiner's files of the record in the case what purport to be certain deeds, one Joel S. Graves to Jas. Read, November 7, 1852, you have that in your hand? A. Yes, sir.

Exhibit No. 6.

Q. Then James Read to Joseph A. Shumake, August 6, 1863? A. Yes, sir.

Q. You have that in your hand? A. Yes, sir.

Exhibit No. 7.

Q. And also a deed from Joseph A. Shumake to Marshall Hobbs, west half, July 10, 1888. You have that? A. Yes, sir.

Exhibit No. 8.

Q. A deed from Joseph A. Shumake to Isaac M. Wilkes to the east half. You have that? A. Yes, sir.

Jan. 7, 1891. Exhibit No. 9.

Q. Then a deed from Isaac M. Wilkes to R. G. Wilby for the east half, January 7, 1891. You have that one? A. Yes, sir.

Exhibit No. 10.

Q. Another one from Marshall Hobbs to R. G. Wilby to the west half, January 9, 1891. You have that one? A. Yes, sir.

Exhibit No. 11.

Q. Then a deed from J. Z. Elliott, receiver, Wilby & Company, to A. T. McIntyre, July 3, 1894. Have you that one? A. Yes, sir.

Exhibit No. 12.

Q. Then a deed from Samuel Hayes, administrator, A. T.
181 MacIntyre, Jr., to John McMullen, November 9, 1898. You have that one. A. Yes, sir.

Exhibit No. 13.

Q. Then a deed from John McMullen to H. T. Crawford, November 9, 1898; you have that one? A. Yes, sir.

Exhibit No. 14.

Q. I ask you, Mr. Merrill, whether or not these are not the docu-

ments constituting the chain of title which you examined in connection with the original deed to the Graves in Thomas County? A. I do not know that I quite understand that question. My recollection is he had a chain from the State down, besides this.

Q. He had something showing a chain of title from—— A. From the State.

Q. To the Graves? A. To the Graves.

Q. To Ely Graves, to Joel Graves? A. Yes, sir; I think I am pretty sure he must have had for me to give him that paper.

Q. He had also, you think, in addition to these deeds which you have called over, he had something showing title from the State to Joel S. Graves? A. Or I found the record of it here, one or the other. I had something to show the title from the State. Either he had it or I found some record. I did at that time have abstracts of title to the Colquitt County lots that were conveyed before it was cut off, part of it from this county. I may have made reference to that in the office.

Q. Now, then, referring to this document, which is the deed to which you have just referred purporting to be from J. J. Read to Joseph A. Shumake, and purporting to be witnessed before N. C. Munroe, notary public, and purporting to have been executed in Bibb County, Georgia. You had no means of ascertaining in the examination that you made whether that was a genuine signature or not of N. C. Munroe, did you? A. No, sir; I took it at its appearance.

Q. You took that deed as it stood and just assuming that the signatures were genuine you passed on the deed on the face of it as it appeared on the face, whether it conveyed title so far as the face of it was concerned? A. That is true, sir.

Q. Looking at this other deed in that chain that you state you examined, purporting to be a deed from Joseph A. Shumake
182 of the County of Burke and executed in Chatham County before W. T. Thomson, notary public, C. C., Georgia, you had no way of ascertaining whether that was genuine or not? A. No, sir.

Q. You did not go into that question at all as to the genuineness of these deeds, did you? A. I only stated, I remember stating something like this to Mr. Crawford, that the deeds had the appearance of being genuine. That as with any lot of titles coming from different parts of the State he was taking some possible chances on their being a forgery, perhaps, but that the deeds had the appearance of being genuine from the difference in handwriting, and that I thought they were all right.

Q. Did you know Nathan C. Munroe, of Bibb County? A. No, sir.

Q. Did you know him by reputation? A. No, sir; I had forgotten the name entirely until I heard something about it in this litigation.

Q. I asked you whether you heard of Nathan C. Munroe, of Bibb County? A. I have heard since this litigation started.

Q. But at that time you had not heard of him at all? A. I had

never heard of him at the time I examined these titles. I have since heard he was a man of——

Q. I do not want what you have since heard.

Q. Mr. Merrill, you stated something, you spoke of having put in a precautionary clause, a cautionary clause in this certificate you gave Mr. Crawford which is stated as follows: "Though we have made no examination of Colquitt County records for liens." That was intended to put any one on notice you were not, that you had not made such an examination, and that a complete examination would require an examination of the Colquitt County records, wasn't it? A. No, sir; the sole purpose of it was to relieve myself from liability. In examining titles I generally give a certificate as to whether there are any liens of record in addition to stating my opinion of the validity of the title, and I wanted him to understand and the people to whom that was going, it was to be sent to somebody who was advancing him some money, that I had not made that examination, so that there could be no complaint of me in the event it turned out there was any claim against it in Colquitt County.

Q. That was to caution them. You called it a cautionary clause in your direct examination? A. I am afraid I cannot claim any larger motive than self-protection in writing that. I do not think I had any other idea.

183 Q. That self-protection was to give them notice in taking that you had not made an examination? A. Certainly not.

Q. Of the Colquitt County records and that knowledge of that title would not be complete until those county records were examined? A. No, sir; I had no purpose in making that suggestion. That did not occur to me, I think. I would state what I had done and let them see about the rest of it themselves.

Q. You had never examined the records of Colquitt County for deeds nor for liens? A. No, sir.

Q. I ask you whether or not at the time you gave that certificate you examined the records of Thomas County and the deed in record book F of deeds of Thomas County, from Joel S. Graves to Cyrus Graves, recorded in Book F, Thomas County, page 677, purporting to convey that particular lot from Joel S. Graves to Cyrus Graves, whether you examined the book, I do not ask you about the deed? A. I cannot state positively about that. I can only state that I saw either the record in Thomas County or the original deed.

Q. From whom to whom? A. From Joel S. to Eli Graves, I think, is the two.

Q. You saw either the record or the original deed from Eli Graves to Joel S. Graves? A. I saw either the record or the original papers from the State down to Joel S. Graves. I do not remember any more accurately than that.

Q. You do not remember about seeing the deed on Record F, page 677, from Joel S. Graves to Cyrus Graves? A. No, sir; I do not remember seeing that.

Q. To that identical lot of land that was in the Crawford deed? A. I do not think that I had to go to the Courthouse.

Q. Isn't it true that all of your examination was confined simply

to an inspection of the deeds which you were given in that chain of title to see that they were regular on their face and purported to convey properly that lot of land and that your examination was not intended to be an examination of all the records to see whether the title was perfect, even as to Thomas County? A. That is pretty nearly true, but in addition to the papers he had there was an examination as to the authority for the making of that deed by MacIntyre's administrator, Hayes, administrator of MacIntyre.

Q. Of course, you looked into that part, the order of Court allowing Hayes administrator to sell? A. And if he did not have that deed, I do not remember whether he had deeds back of this one from Joel S. Graves, I looked on the records either in
184 the Courthouse or my office. I have at my office an abstract of all the county, and I looked at the records for one, either there or here for whatever he did not have to make a complete chain from the State down. Otherwise your statement of the case was correct.

Q. You did not look to see whether there was any other title out of Joel S. Graves, than that particular title, Joel S. Graves to James Read, which was tendered you when you examined the chain of title? A. No, sir; I did not search the records for anything of that sort. I did not suspect it.

Q. The deeds which were brought to you for inspection was this chain of title right on down through to H. T. Crawford? A. Yes, sir.

Q. And Mr. John McMullen and his father were in there during the time that you were passing on that title and fixing it up? A. They were in and about there once any way during the day.

Mr. ERWIN: We desire to have these deeds which were offered originally on the rule *nisi* by Mr. H. T. Crawford, but are impounded in the case and which have been identified by Mr. Merrill as being the title that he had under consideration marked for identification.

Mr. PEARSALL: Do you tender them as your evidence?

Mr. ERWIN: We ask to have them identified.

Mr. PEARSALL: Until we tender them properly in evidence I think that it would not be proper to have them identified. We may ask for an order withdrawing those deeds for proof.

Mr. ERWIN: We ask to have them identified and we have the right. We want Mr. Merrill's testimony to be connected with these papers by numbers, so that we will know.

Redirect examination:

Q. In making the examination into whether a deed is genuine or not or complete chain of title, you have to go by the appear-
185 ance of the deeds themselves? A. Yes, the appearance of the paper itself. It is about the only way.

Q. That is the only accurate way by which you can tell whether a deed is genuine or appears to be a genuine deed? A. Yes, sir.

Q. Is from an examination of the deed itself? A. Yes.

Q. That is the most accurate way? A. Unless I could get at the parties.

Q. When you pass an opinion as to whether a deed is a genuine deed you have the original deeds before you and look at the physical appearance of the deeds? A. Yes.

Q. At the time you made the examination of these deeds about which you are testifying, the physical appearance of that chain of title was that it was complete, and perfect, and genuine chain of title? A. Yes, sir.

Mr. ERWIN: I object to that question because the evidence of Mr. Merrill's good faith in making the examination is not relevant or pertinent, and I object to it on the further ground that Mr. Merrill has not shown himself an expert in passing on the genuineness of deeds by showing that he is familiar with land conveyances and forgeries of title, and that particularly as his evidence shows that his examination was not directed to that question at all; that he was passing simply on papers as to what they showed on their face and because he shows that his examination was merely made to give a certificate to Mr. Crawford in order that Mr. Crawford might send it to his factors in Savannah to get a loan, that the certificate itself is so worded as to put Mr. Crawford on notice that the examination was merely a perfunctory one in regard to what the papers showed on their face.

Q. What experience? You have had some experience? A. You asked me about that at first.

Q. What do you mean by a perfect title. You say in our judgment gives them a perfect title. Do you mean every deed in it was genuine? A. Plot and grant from the State and then from one individual on to the next in due form, and recorded.

Q. And that each deed was a genuine deed? A. Yes, in my judgment, and I would think so now to see those deeds again, today presented to me.

Q. From their physical appearance? A. From their appearance I would say now they are genuine.

186 Q. A perfect chain of title? A. Yes.

Q. This clause you speak of as a precautionary clause, Mr. Erwin speaks about, that refers to the liens that any of these parties may have had recorded in Colquitt County? A. Yes.

Q. You did not guarantee that there were not any liens, but that there might be liens upon this title he was conveying? A. Yes.

Q. You stated the McMullens were probably present. Were you positive old man William McMullen was present? A. The young man, I am sure, was in the office once during the day, and I have the impression, but it is a very indistinct one, that the old man was here.

Q. You are not positive as to that? A. No, sir.

W. T. THOMPSON, called for the complainants, duly sworn, testified:

(Examined by Mr. ERWIN:)

Q. Your name is what? A. My name is Walter Tatnall Thompson.

Q. You usually sign it W. T. Thompson? A. Always, except when I have been called on to sign it Walter T. Thompson.

Q. Where do you live now? A. Quitman, Brooks County.

Q. Where did you live prior to living in Brooks County? Did you live in Savannah at any time prior to that? A. Yes, sir; I lived in Savannah from the time I was born until 1894.

Q. You are son of Col. W. T. Thompson, former editor of the Morning News, were you not? A. Yes, sir.

Q. Were you connected with any business in Savannah in the year 1888-9, along there? A. Yes, sir; I was bookkeeper, cotton buyer and cashier for Joe C. Thompson, who was doing a general merchandise business. I was notary public at the same time—commercial notary public.

Q. In Chatham County, Georgia? A. Yes, sir; in Chatham County.

Q. Your father's initials were "W. T." Thompson, also? A. Yes, sir.

Q. He died when? A. I am not certain about that. I think he died in 1881.

Q. About '81? A. He died in '81.

Q. You have a nephew of the name W. T. Thompson? A. Yes, sir.

187 Q. He was a boy in '88, was he not? A. Yes, sir.

Q. Then besides those you speak of and yourself, was there any other man in Savannah with the initials W. T. Thompson that you knew of? A. No other by that initial that I knew of.

Q. You were an old resident of Savannah, then? A. Yes, sir.

Q. And you were very well acquainted with the people in town? A. Yes, sir. Could not have been more so. I was raised in the town; lived there all my life.

Q. Look at this document which is taken from the files of the Examiner, purporting to be a deed dated the 10th day of July, 1888, from Joseph Shewmake, of the County of Burke and State of Georgia, to Marshall Hobbs, of the County of Brooks, and purporting to be executed in Chatham County, Georgia, before W. T. Thompson, notary public, C. C., Ga. State if that is your signature to that deed as a witness? A. No, sir; that is not my signature, and I want to state to the Court that my being a notary public was different from the ordinary notary public, a man who puts out his sign as notary public and is in that business. I was just merely commercial notary public for the convenience of Joe C. Thompson's business. He sold goods and took mortgages, and rather than send out to get a notary public, I was commercial notary public and witnessed them. He would take a mortgage on land, I would witness it, or a mortgage on a horse, or anything like that, in the business, and I did not make it a business, as Mr. Erwin knows, as notary public. I did not so

publish myself. I did not cater to the business. This is not my signature. I have no recollection of any such paper, and if anything like this had come to me as a rule I would have remembered something about it, because it would have been out of the regular routine of my business.

Q. You are positive that is not your signature? A. I am positive.

Mr. PEARSALL: We object to the question and answer as being irrelevant and immaterial; that no issue of forgery has been filed by the complainants, and no question as to the validity of these titles has been made by the complainants, and these titles have not been tendered in evidence by the defendant. We further object to the latter part of the witness' answer as not responsive to the question, and his answer as to what his habits and customs were in signing papers, is irrelevant and immaterial.

188 Q. Mr. Thompson, did you know a man by the name of Joseph Shewmake, of Burke County? A. No, sir. I do not know him now. Never heard of him at all.

Q. Did you know a man by the name of S. C. Bass who purports to witness that deed with you? A. No, sir.

Mr. PEARSALL: We object to that question and answer as being irrelevant, immaterial and because there is no issue of forgery.

A. You asked me the question do I know a man by the name of S. C. Bass. I do not know a man by the name of S. C. Bass. I don't remember ever hearing the name.

Mr. PEARSALL: We object to that as irrelevant and immaterial.

Q. Do you know, or did you know at that time, or do you know, now a man by the name of Marshall Hobbs, in Brooks County? A. No, sir.

Q. You live in Brooks County? A. Yes, sir; I have been living in Brooks County three years.

Mr. PEARSALL: We object to that as being irrelevant, illegal and immaterial.

Mr. ERWIN: We desire that the Examiner note the number of the exhibit, as he marks it, to which Mr. Thompson's testimony applies.

Marked, Exhibit No. 8.

Cross-examination.

Mr. PEARSALL:

Q. What is the population of Savannah? A. Well, now, I don't know.

Q. About what? A. Now, I tell you. When I lived in Savannah, they used at one time to say it was about 50,000, and Atlanta claimed 75,000. That was at the time I lived there. I don't know how it was.

Q. It is a city of about 50,000 population? A. I think now the last census makes it more than that.

Q. Do you claim to know all the people living in Savannah? A. I certainly do not.

189 Q. You don't know whether there are any Thompsons there or not? A. I do know Thompsons there, and I don't know how many Thompsons, and don't know the names of all of them.

Q. You don't know the name of any other there by the name W. T.? A. I do not know, except one, a nephew of mine of that name, now that I know of. There may be more. I haven't had a directory. I don't know. There may be a great many other W. T. Thompsons. I don't know how many Thompsons there.

Q. How do you spell your name? A. T-h-o-m-p-s-o-n.

Q. W. T., that is your initials? A. Yes, sir.

Q. You cannot say whether that is a genuine signature? A. That is not my signature. I can't say whether it is genuine or not.

Q. You cannot say whether it is a genuine signature? A. I cannot. I did not sign it. It is not my signature.

Q. You don't know whether it is a genuine signature? A. That is something you would know as well as I would.

Q. You do not know all the residents of Brooks County, you said something about Brooks? A. I have been living and buying cotton in Brooks County three years. I know nobody in Brooks County excepting men that I have been thrown with in business, like I have Mr. Hayes over there.

Q. You do not say there is no man living there by that name? A. I may have bought a bale of cotton yesterday from a man of that name, and never looked at the name.

SAMUEL L. HAYES, called as a witness for the complainant, duly sworn, testified.

(Examined by Mr. ERWIN:)

Q. Where do you reside? A. In Thomasville.

Q. What position do you occupy here? A. I am president of the Thomasville National Bank.

Q. Did you hold that position in November, '98? A. Yes, sir.

Q. Were you also at that time administrator of the estate of A. T. McIntyre, Jr.? A. Yes, sir.

Q. Look at this deed which purports to be a deed dated the 9th day of November, 1898, from Samuel L. Hayes, administrator, A. T. McIntyre, Jr., to John McMullen, which is witnessed by H. T. Crawford and C. M. Smith, a notary public. That is your

190 signature to that deed, is it not? A. Yes, sir; that is my writing. That is my signature.

Q. This deed purports to be for a consideration of $500. I will ask you to look at this check which is signed H. T. Crawford, dated November 10th, 1898, in favor of John McMullen for $1,500, and indorsed on the back John McMullen, by his mark, attest S. L. Hayes, and I will ask you to state whether you have seen that check before? A. Yes, sir; I have seen it before.

Q. Did that check pass through your hands at or about the time

of the delivery of this deed that you have just testified about? A. Yes, sir.

Q. Do you know how the proceeds of that check were divided? A. Yes, sir; $1,500, the face of the check; $995 paid in cash to Mr. John McMullen. That left $505.00. Fifty cents paid for stamp, and $504 went to the credit of S. L. Hayes, administrator, A. T. McIntyre, Jr.

Q. Now that check was deposited in your bank, was it? A. Yes, sir. The money was paid out across the counter for the check, the check was sent forward to Savannah through the Savannah National Bank, where it was paid, and went to our credit.

Q. Your bank cashed the check? A. Yes, sir; and paid $995 to Mr. John McMullen. That left $505.00. Fifty cents paid out for a revenue stamp, and $504.50 went to the credit of A. T. McIntyre or me as A. T. McIntyre's administrator.

Q. So that $504.50 was the consideration which you received for making this deed to Mr. John McMullen which you have just testified about? A. Yes, sir.

Q. Mr. Hayes, before you made this deed and made this sale of this property as administrator of A. T. McIntyre, Jr., did you see Mr. H. T. Crawford and Mr. John McMullen and Col. A. T. McIntyre together conferring about the sale? A. Yes, sir.

Q. Now state what conversation occurred in reference to selling this lot of land at the price of $500, between you, John McMullen and Col. McIntyre? A. Col. McIntyre sent for me to come to his office, and he, Mr. McMullen and Mr. Crawford, as I recall, were there, and he told me that he had found among some papers there a deed to a certain lot of land to A. T. McIntyre, Jr. The deed as I remember was from Elliott, trustee of R. G. Wilby, and the consideration expressed in the deed was $5.00, and he told me that he could sell A. T. McIntyre's half interest in the deed or in the
191 land for $500.00, and told me he thought I had better accept the money. Col. McIntyre, I will state, was attorney for A. T. McIntyre, Jr., and I was administrator and acted under his advice.

Q. What did he say about who owned the other half interest and who was to get the other part or any part of the payment for the lot? A. He said McMullen, I think he referred to the elder McMullen; I do not know whether he referred to John or to the old man, but he said that the understanding was that Tom—A. T. McIntyre, Jr.—had a half interest in it, and this other man, McMullen, was to get up deeds and titles and was to receive half the money when it was sold.

Q. But the title was in whom? A. A. T. McIntyre, Jr.

Q. The title was in A. T. McIntyre, Jr.? A. Yes, sir.

Q. And the other half interest was to go to McMullen? A. Yes, sir.

Q. For getting up the previous title to the receiver? A. The claim of title to make it complete.

Q. John McMullen and H. T. Crawford were the men that were there? A. Yes, sir.

Q. Acting under his advice you made the sale? A. Yes, sir.

Q. And the money, $1,500, was paid through this check as you have testified? A. Yes, sir.

Q. Who had attended to getting such orders in regard to sales by you as administrator in the Courts as were necessary. A. Col. McIntyre, Sr.

Q. Mr. Hayes, were you present during the whole time that conversation was going on between Col. A. T. McIntyre, Mr. Crawford and John McMullen? A. No, sir.

Q. What happened? A. I went back to the bank.

Q. While you were in the office did they remain in there talking to you all the time? A. No, they went in the back room, I believe, the ante-room and office, together, Crawford and McMullen.

Q. Out of your presence some time? A. Yes, sir.

Q. Crawford and McMullen? A. Yes, sir.

Cross-examination:

Q. How long have you been knowing Mr. John McMullen, Mr. Hayes? A. I do not know that I ever saw him until that morning. I may have seen him once before, but never to know him in a business transaction until that morning.

Q. Did you ever have many transactions with Mr. Crawford? A. No, sir; none that I remember of.

192 Q. Had you ever seen Mr. William McMullen? A. No, sir.

Q. Did you know him? A. No, sir.

Q. Did you ever see him? A. I don't know that I ever did.

Q. You don't remember ever to have seen Mr. William McMullen? A. I do not remember ever to have seen him.

Q. Is it very clear in your mind about the minor details, and who was present in Col. McIntyre's office at the time you spoke about? A. Yes, sir; only three of us present, aside from Col. McIntyre. Mr. Crawford, John McMullen, Col. McIntyre and myself.

Q. I mean as to whether they all stayed in there any length of time? A. No; I remember distinctly of Crawford and McMullen separating themselves from Col. McIntyre and going into the larger room. We were sitting in the little room. And they remained in there, I do not know how many minutes—half hour or some such matter as that.

Q. When they came back from the room, did both come back or only Mr. McMullen came back? A. I do not know whether both came back or not; I don't know.

Q. Nothing to impress it upon your mind as to whether they were all three present, that is Col. McIntyre, Mr. John McMullen and Mr. H. T. Crawford, all present during the conversation.

Q. Up there in Col. McIntyre's office when you were speaking about this land, during the entire conversation that you had while up there? A. No, I do not think Crawford was present all the time that Col. McIntyre, John McMullen and myself were discussing this there.

Q. Now, this check which you have exhibited, sight draft on Sa-

vannah, that money was paid or supposed to have been paid to John McMullen? A. Yes, sir.

Q. With the exception of $505. A. Yes, sir.

Q. All the balance paid to Mr. John McMullen? A. Yes, sir.

Q. Do you remember anything about a telegram having been sent to the drawees of that paper as to whether they would cash it? A. No, sir.

Q. You don't remember—— A. No, sir.

Q. —whether that was true? A. The cashier of the bank may possibly have sent one; I do not know of my own personal knowledge.

Q. It is probable that some assurance would have been given that that would have been paid, isn't it, before you would have
193 paid that amount of money? A. It is possible, unless Col. McIntyre said he knew it was all right.

Q. That is unless McIntyre had indorsed it or guaranteed it you would have made some inquiry about whether it would be paid? A. Yes, sir; a man presenting a check without our knowing about him, of course, I would have made some inquiry about it.

Q. Here is an order for the sale of that land, Mr. Hayes, a certified copy of the order obtained authorizing you to sell this particular lot of land, either at public or private sale; will you examine it and state the date of that order which authorized you to sell it? A. I cannot do it, unless it appears here somewhere.

Q. In the upper part somewhere? A. I guess it is at the bottom, October 19, 1898.

Q. That is the date of the order which authorized you to sell? A. I suppose so. The date, I suppose, is correct.

Q. What is the date of the deed which you made to Mr. McMullen? A. I think the 9th day of November; I think it was the day prior to this transaction, 9th day of November, 1898.

Q. Was the date of the deed? A. Yes, sir.

Q. Had you had any previous conversation with anybody other than this that you recollect about the sale of this land? A. No, sir; I don't think I have.

Q. You do not remember to have conferred with Mr. Crawford? A. No, sir.

Q. At any time? A. No, sir.

Q. Except on this occasion. Do you recollect that Mr. William McMullen ever had any conversation with you about it? A. I don't think I do.

Q. You do not recollect that he ever saw you about this land? A. No, sir.

Q. You know nothing about the trade between Mr. Crawford and Mr. McMullen? A. No, sir.

Q. Or whether Mr. Crawford ever conferred with Col. McIntyre before the occasion of which you speak? A. No, sir; except that they were up there together before I came up.

Q. Do you know anything about the transfer from McMullen to Crawford, the consideration expressed? A. No, sir; not of my own personal knowledge, I do not.

Q. I would like for you to read that draft, Mr. Hayes, the whole thing, read it, and indorsements? A. Moultrie, Ga., Nov. 10, 1898, No. —. At sight pay to the order of John McMullen, $1,500
194 (fifteen hundred dollars.) Lot 383, land and timber, value received, and charge same to the account of H. T. Crawford. To Peacock Hunt & Company, Naval Stores Commission Merchants, Savannah, Ga.

Q. On the back is indorsed what? A. On the back is the indorsement, John McMullen, his mark, attest S. L. Hayes,—I witnessed his signature, he could not write—and then on there is our bank stamp, Pay to the order of the National Bank of Savannah, Thomasville National Bank, W. H. Rockwell, Cashier, Nov. 10, 1898, and then National Bank of Savannah stamp, paid Nov. 11, 1898.

Q. In the face of that that says for land lot 383? A. Yes, sir.

Q. This deed you made to John McMullen is to the same as express in that draft? A. Yes, sir; here it is, 383, written and printed.

Q. The estate of A. T. McIntyre, Jr., then received from Mr. Crawford from the proceeds of this draft, or Mr. McMullen, $505. A. Yes, sir.

Q. That consideration being for lot of land 383. A. Yes, sir.

Redirect examination:

Q. I call your attention to this clause in the answer filed by Col. A. T. McIntyre, Sr., for himself and also for you as administrator, A. T. McIntyre, Jr.:

"Sometime in the latter part of 1898, Mr. Wm. McMullen came to your respondent, and said that he and the Junior had bought another lot or other lots of land besides the Graves lot, and that he was equally interested in it, although the Junior furnished the money, and that he could get five hundred dollars for one of the lots, and wanted Mr. Hayes, the administrator upon the estate of A. T. McIntyre, Jr., to sell it and to divide the money after paying the cost and interest. This, respondent thought, was right, and made application to the Court and got leave to sell it. Subsequently Mr. McMullen came down here, and said that the man would give fifteen hundred dollars for it if he could get a warranty; that he, Wm. McMullen, was not afraid to make a warranty, and that Mr. Hayes could not make one. Would respondent be willing for Mr. Hayes to take five hundred dollars cash, and let him take the balance on time, and he would make the warranty."

Did any of that conversation come to you at the time of the getting of that order to make the sale or at the time of the
195 making of the sale in regard to the conversation between Col. McIntyre and Mr. Wm. McMullen? A. I do not think so. I have no recollection of it.

Cross-examination:

Q. You never had any conferences with Mr. William McMullen at all, did you? A. No, sir.

EDWARD O. THOMPSON, called for the defendant, duly sworn, testified:

(Examined by Mr. PEARSALL:)

Q. How old are you, Mr. Thompson? A. I am nearly 65.

Q. Where do you live? A. In Thomasville.

Q. How long have you been living here? A. I have been here since '64. I was here before '64, but I was away part of the time then.

Q. Who was your first wife? A. Cornelia Ann Graves.

Q. What relation was she to Abram Graves? A. She was his daughter.

Q. What kin was she to Cyrus Graves? A. Sister.

Q. Was your wife and Cyrus Graves the only children of Abram Graves? A. They were the only children; only living children.

Q. Where did Abram Graves come from? A. He came here from Warrensburg, New York.

Q. About what time? A. I should think about 1857.

Q. What kin was Abram Graves to Joel S. Graves? A. They were brothers.

Q. Do you know the consideration of a deed from Joel S. Graves to Abram Graves to some several lots of land in Colquitt County? A. Joel Graves did not make the deed to Abram Graves. He made those deeds to Cyrus Graves by Abram Graves' order.

Mr. ERWIN: I object to the question and the answer because, in the first place, it undertakes to set out an order, and is undertaking to vary by parol a solemn deed. It is incompetent to attack a deed made and purporting to be made for a consideration stated, in this way, unless there be some special circumstances not yet shown which would warrant it. And the statement of an order by parol testimony is not competent.

196 Q. You say that Abram Graves had lent Joel Graves——

Mr. ERWIN: I object to the question as leading.

A. That information can all be got from the Surrogate's Court at Warrensburg, New York, where Abram Graves made disposition of all this property to Cyrus Graves. That is a matter of record in the Surrogate's Court in Warrensburg, New York.

Mr. ERWIN: I object to any testimony of the substance of a record there, because the record is the best evidence of what it contains. It is incompetent to undertake to show by parol the contents of a record or substance of it.

Q. Now state whether, if you know, the consideration for this transfer? A. I never saw the document——

Mr. ERWIN: I object to the testimony of contents of the document.

A. I heard the conversation.

Q. Heard the conversation between whom? A. Between Abram Graves and Cyrus Graves.

Q. Tell what the conversation was? A. When Cyrus Graves failed to remain with him, Abram Graves says, "Here is your note that you gave as a guarantee that you would live with us and take care of us as long as we lived. Now seeing you have gone to yourself, you give me back half of my property that I gave you and I will give you back your papers."

Mr. ERWIN: I again object to any testimony undertaking to break the force of a solemn deed after forty years by testimony of conversations between persons, grantor and grantee, in the deed made forty or forty-five years ago.

Q. Cyrus Graves then refused to comply with his contract with Abram Graves?

Mr. ERWIN: I object to that as leading.

197 A. As he went to himself. He went to Homerville and put up a mill there on his own account. And Abram Graves was living up here. I had married maybe six or seven or eight months when Cyrus Graves put up the machinery at Homerville. Abram, after Cyrus Graves would not come and live with him, why he wrote for me to come down and stay with him. I came down. He said him and his wife was too old to live by themselves. They were living in four miles out here. He was four miles out on the Grooverville road between here and Boston. And I came down and stayed with the people.

Q. Did Cyrus Graves convey back to Abram Graves part of this property in Colquitt County? A. Yes, sir.

Mr. ERWIN: I object to any proof of part conveyance back by parol, if there is any evidence of the reconveyance or anything I insist that the only proper evidence is the deed itself.

Q. Do you know where that deed that Cyrus Graves made to Abram Graves is? A. No; I have no recollection about it. I just know when I sold the lot of land that I let the deed follow the deed from Abram Graves to Cyrus Graves, and Abram Graves. The deed I made as administrator.

Q. You have seen that deed? A. I surely have. I have seen it.

Q. The deed from Cyrus Graves conveying to Abram Graves part of this land in Colquitt County? A. One lot of land.

Mr. ERWIN: I object to any evidence in regard to that until the witness who is examined as to the contents of that deed first shows that the deed is lost, and then he must describe it in terms by date of the deed, by the witnesses to the deed, and other description that would be competent to establish it. Until he does that any evidence of the general effect of the deed is incompetent.

Q. Do you remember the date of that deed from Cyrus Graves to Abram Graves to this one lot of land. A. No, I would think it was about the fall of '62.

Q. Do you remember who were the witnesses on it? A. No, I don't.

Mr. ERWIN: I move to rule out that evidence on the grounds stated.

198 Q. Where is Abram Graves now? A. He is dead.
Q. Who was his administrator? A. I was.
Q. This lot of land to which you refer, it is one of the six lots—

Mr. ERWIN: I object to any leading of this witness. Counsel has repeatedly led this witness in this case, and this is in the most vital testimony affecting his case, and I ask that the Examiner note my protest and ask that the evidence shall hereafter in this case be excluded—any testimony brought out from this witness, leading him in these matters.

Q. To whom did you sell this lot of land? A. I sold it to Bruce and Bower.
Q. Of this county? A. Yes, sir.

Mr. ERWIN: I object to that question and answer because the sale of land must be evidenced by deeds, and the oral testimony to prove a sale of a lot of land, about which the witness has not even yet stated the number, the date of the sale or anything about it, or accounted for the deed, should not be admitted.

Q. Did you make a deed to this land to Bruce and Bower as administrator of Abram Graves? A. I did.
Q. About what time? A. I should think it was the fall of '65, maybe. I have forgotten what year the war did end. It was about nine months after the close of the war.
Q. You properly executed that deed? A. I did so far as I know.

Mr. ERWIN: I object to this attempt on the part of the defendants to prove a deed that is not produced in evidence, a copy not even produced from the record, and attempting to prove the conclusion that a deed was properly executed without proving who the witnesses were and that it was in fact properly executed.

Q. Do you remember who the witnesses of this deed were? A. No, I do not.
Q. What did you do with that deed after you signed it? A. I gave it to Dr. Bruce.
Q. Did he pay for it? A. Yes, he paid half cash and
199 half in twelve months. Paid $37.50 once and $37.50 twelve months after that.

Mr. ERWIN: I move to rule out that on the ground that it is trying to prove the consideration expressed in a deed not accounted for otherwise.

Q. Do you know where that deed is? A. No, sir. Colquitt County land at that time was not very valuable.
Q. Do you remember the number of this lot? A. I do not.
Q. Identify it as well as you can? A. I could not do that. It occurs to me it was about 224 or 324 or something like that. I do not know certainly. I would think that it would be in my returns, but I am not sure about it.

Q. State whether it was one of these six lots? A. It was one of those lots in the block deed.

Mr. ERWIN: I object to that question because counsel deliberately has led the witness after repeated notice, and is attempting to give the witness a description of the lot in advance, and particularly after the witness has stated that he does not remember the numbers of the lots. I move to rule out the answer when it is now given.

Q. Which six lots? A. Six lots conveyed from Joel Graves to Cyrus Graves in the block title.

Q. Did you ever have any transaction about these lands after this time with Mrs. Graves the widow of Cyrus Graves? A. I paid taxes on them and gave them in a number of years. I do not know that I was legally appointed to do that but I did do that.

Q. For Mrs. Graves? A. For Mrs. Graves. The widow of Cyrus Graves.

Q. How many lots of land did you return? A. There was a number of years that I returned four lots and then I found a deed that had been — There was one lot of land that had been hypothecated with Kennith McKinnon, some security between Joel Graves and Kennith McKinnon, and before that lot was returned or before this deed was returned, Abram Graves and Cyrus Graves had both died. I did not know anything of it for a number of years and when the deed was returned then I began to give in five lots.

200 Q. State whether you ever returned for taxation the lot which you sold to Bruce and Bower? A. I returned it as estate of Abram Graves.

Q. After you sold it? A. No. After his death I returned it as estate of Abram Graves. I never returned it any more.

Q. Did you ever hear Mrs. Graves say anything about this lot which you conveyed to Bruce and Bower? A. No, Mrs. Graves never said anything about any part of that property until about a year and a half ago or such a matter, may be two years ago.

Q. Did she ever claim this property, this particular lot which you sold? A. I did not understand it until this last time she was here that she would probably claim it. She inspected the court house for all manner of deeds and doings, and I think she knows more about this court house than any lawyer in Thomasville.

Q. And not until after here in the last year or two did she ever lay claim to this lot which you sold to Bruce and Bower? A. I am telling you what I think about it——

Mr. ERWIN: I object to any testimony as to what this witness thinks about anything in this case as being incompetent, and in the second place it being in evidence that Cyrus Graves died in 1863.

Q. When did Cyrus Graves die? A. About '63.

Mr. ERWIN: The actings of this witness in regard to a lot of land to which title had passed out of Cyrus Graves in 1863 and on his death to his wife and daughters, is not competent or binding on these parties, and an attempt to set up adverse title by parol.

Q. What did you start to answer? A. I said that she had never

said anything about it until she got through with her examination of the Court house here. I suppose she did not find any record of the deed. I presume that that was the cause. At least she told me that. She said there was no record of that deed. I guess she knows.

Q. You have seen the deed. I believe you stated you had seen the deed from Cyrus to Abram Graves. A. Yes, sir.

Q. And that you as administrator sold the same lot to Bruce and Bower? A. Yes, sir. Whatever lot it was, one of those lots sold to Bruce and Bower. I never paid much attention to it because they were not worth much of anything.

201 Mr. ERWIN: I again object to that.

CHARLES P. HANSELL, called as a witness for the defendant, duly sworn, testified:

Examined by Mr. PEARSALL:

Q. What is your name? A. Charles P. Hansell.

Q. You reside in Thomasville? A. Yes, sir.

Q. A lawyer by profession? A. Yes, sir.

Q. You were a practicing attorney on the tenth day of January, 1899, were you? A. Yes, sir.

Q. A member of the firm of Hansell & Merrill? A. Yes, sir.

Q. Will you examine those papers, Captain, and state if they were used in the same proceeding in which you were attorney? A. Yes, they were used in the case to stop Mr. McMullen, to enjoin Mr. McMullen. I drew them up.

Q. Those were signed by Mr. Graves. Will you read the first clause and down to there, Captain? A. "Georgia, Thomas County. Before me personally came Mrs. Jennie L. Graves, who being duly sworn says that she and her two daughters are the only heirs at law of Cyrus Graves and that as such she had an interest in certain lands In Colquitt County but that sometime since she conveyed all her interest in said land to her two daughters, Minnie C. and Ida J. Graves, and since then has had no interest in lands in said County of Colquitt."

Q. Will you read this clause down here? A. "Deponent is not in any way liable to William McMullen for his services in looking after the lands in so far as he rendered any because she has had no interest in the land since 1889."

Q. That was sworn to by Mrs. Graves and used as evidence? A. I cannot recollect that I saw her swear to it, but I know that is Dr. Culpepper's signature.

Q. It was used as evidence before Judge Hansell to obtain an injunction? A. Yes, sir.

Affidavit referred to is marked Exhibit No. 16.

Q. What is that? A. That is an affidavit prepared at the same time by me for Misses Ida J. and Minnie C. Graves.

Q. Read this sentence in that affidavit? A. "That their
202 mother has conveyed all her interest in said lands to deponent and now has no interest therein."

* * * * * * *

"Despondents say further that they never had any contract with said McMullen to represent them unless his agreement to look after their lands without compensation or pay of any kind can be called a contract and that the pretended representation of them by McMullen has not been worth anything to them so far as they can see, but has been the means of getting them in trouble rather than keeping them out of it."

Affidavit referred to is marked Exhibit No. 16.

Q. That affidavit was used? A. Both used in the same hearing before Judge Hansell on the question of enjoining Mr. McMullen from selling a lot of land up there.

Q. Do you know Betty Bruce Daniels? A. Yes.

Q. Who was she? A. Daughter of Dr. R. J. and Mrs. Rebecca Bruce.

Q. Who were the only children of Dr. and Mrs. Bruce? A. Three children, Miss Betty, Dr. W. R. Bruce and a boy named Archie. Archie was a boy about 14 or 15 years old, and died a year or less after his fater.

Q. Died without any heirs? A. Yes. The widow, Mrs. Rebecca Bruce, Miss Betty Bruce, now Mrs. Daniel, and Dr. W. R. Bruce were the only ones who figured as heirs at law, because the boy died before the estate was administered.

Q. Betty Bruce Daniels was one of three heirs of Dr. Bruce? A. She was one of the three heirs of R. J. Bruce.

Cross-examination:

Q. Mr. Hansell, referring to the attachment suit against the property of Ida J. Graves, Minnie C. Graves and Jennie L. Graves. The McMullen suit for $500, issued by J. A. Wilkes, county judge? A. Yes.

Q. That is dated June, 1898, and that was levied on lot 354 in the 8th district, wasn't it? A. I really do not know. I never saw that attachment at all. That got up as Mr. Merrill told you this morning.

Q. If you did not see it how did you get up the papers to meet the attachment? A. Yes. Now if you want to be exactly correct about that, I did not get up the bill individually. I was in Atlanta. Mr. Merrill got up the bill and filed it and I prepared the affidavits.

203 Q. You prepared the affidavits? A. Yes, sir.

Q. One of the lots was attached, wasn't it? A. Yes.

Q. If the record shows it is lot 354 you do not dispute that? A. I do not dispute a record.

Q. The bill of Mr. McMullen was for services alleged to have been done in reference to lots 383, 384, 354, 345 and 437? A. I say I do not know that I ever saw the items of the bill at all. The matter went off, without going into them.

Q. If the bill attached to that attachment shows that you do not dispute that? A. I do not deny it.

Q. Do you know whether lot 353 was in controversy at all either

by levy on it or by alleged service about it in that attachment proceeding? A. No, sir; I do not.

Q. Do you know whether the expression, when you drew it up—you drew up this affidavit—if that expression certain lands referred to lot 353 or to the lots in controversy in that attachment proceeding and for the services rendered, do you know of your own knowledge? A. I do not. They did not specify the numbers.

Q. You drew the affidavits as you understood the case and presented it to them and they read it over and signed it. It was done hurriedly one night. A. No, sir.

Q. One day? A. No, sir; they dictated very well those affidavits themselves.

Q. You drafted them. A. Yes, sir.

Q. And they signed them up? A. Yes, sir. I say "dictated." I do not mean they sat down and told me what words to put in, but they gave me the substance and I wrote it off, and they corrected, one of them afterwards.

Q. Mr. Hansell, do you know any one by the name of H. Garbonat? A. No, sir; I do not know any man of that name written there.

Q. Look at this deed purporting to be signed by Betty Bruce Daniel in Thomas County, Georgia, at the head of the paper, in the presence of L. E. Dixon and H. Garbonati, judge of the County Court. Is there any man by that name in this county judge of the County Court of this county on the 30th of June, 1890? A. No, sir; or any other time.

Q. On the back of this deed is a certificate signed in the same name H. Garbonati, ex-officio clerk of the County Court of LaPlata, State of Colorado, County of LaPlata. You do not know whether he might have been judge of the County Court in that county in Colorado or not? A. No, I do not know anything about that. There is a seal and certificate. I generally accept them but
204 there is no such man in Thomas County. No such man ever was judge of the County Court here.

Q. Referring now to this certified copy of the William McMullen attachment from the County Court of Colquitt County, certified on the second day of May, 1899, J. A. Wilkes, judge of the Colquitt County Court. That is Judge Wilkes' signature is it not? A. Personally I do not know.

Q. Do you know the seal of that Court. You practice over there? A. No, sir; I don't think I have ever practiced there.

Q. You never practiced in Colquitt County? A. Not in the County Court.

Q. You do not know that? A. I have had some matters for the judge and may have seen his signature occasionally, but I cannot say I can swear to that.

Q. Now I will ask you to look at that certified copy of that record from the County Court and state whether or not that is the suit that you took those affidavits in? A. No, sir.

Q. Was it the suit? A. We took those affidavits to get an injunction on a bill to enjoin this suit.

Q. That is what I mean to say. It was a bill to enjoin this par-

ticular suit? A. Yes, to enjoin an execution issued on that from selling out certain lands.

Q. This suit says that it was levied on lot 354, if the record is correct? A. Yes, sir.

Q. And that the services rendered for which the attachment was had was in reference to lots 383, 384, 354, 345 and 437 if the record is correct? A. If the record is correct. I do not know really of my own knowledge. I can explain it to you.

Q. I do not care for anything further than what I have got.

Mr. PEARSALL: You will note our objections to the contents of this suit because there has been no properly certified copy of the attachment suit introduced or exhibited to the witness.

Mr. ERWIN: We tender that certified copy of the attachment suit in evidence, which the witness has just examined and which counsel now has in his hands, duly certified by Judge Wilkes.

Marked Exhibit No. 17.

205 Mr. PEARSALL: We object to it because there is no proper certificate of this suit and that signature J. A. Wilkes, judge of the County Court and not as ex-officio clerk of the Court, nor does it appear that there was no clerk of the County Court who should have attached this certificate.

J. A. WILKES, called for the complainant, duly sworn, testified:

Examined by Mr. ERWIN:

Q. You are judge of the County Court of Colquitt County. A. Yes, sir.

Q. Were you judge of that Court on the second day of May, 1899? A. Yes, sir.

Q. Is that your signature to that certificate? A. Yes, sir.

Q. Is the certificate proper which states J. A. Wilkes, judge of the County Court of Colquitt County and ex-officio clerk of the same, do hereby certify. Is that part of it correct which states you are ex-officio clerk of the Court? A. Yes, I was acting as my own clerk at that time.

Q. There was no other clerk than yourself? A. No, sir; I have a clerk now, but it is since that was written.

Q. You made this certificate? You carefully compared the copy with the original? A. I would not be positive, unless I had the order, I do not remember the date. I have the clerk of the Superior Court now for my clerk, deputy clerk I should say. I said that I had no clerk then. I will take that part back. I do not remember the date really unless I had the order that I drew and put on the minutes appointing my clerk. It was last year sometime I think.

Q. At the time that you gave this certificate you were acting as your own clerk? A. Yes, that is what I do not know.

Q. You certify to it here at this time? A. Yes, sir.

Q. If you were not acting as clerk you could have certified it? A. I signed it if you notice as judge of the County Court. If I had the order I would be able to testify whether I had a clerk or did not

have any. I do not remember the date that I appointed Mr. Henderson my clerk.

Q. Now, judge, I ask you whether when you made this certificate you compared the pleadings which are certified there, whether you examined the original record and compared that with the original and found it to be a true copy? A. Yes, sir, or I would not have certified to it, if I had not.

206 Q. You as a matter of fact compared it with the original record of the Court of which you are judge. A. Yes.

Q. And this paper attached to the certificate is a true copy of the original record? A. Yes, sir.

Mr. PEARSALL: Note our objection to the evidence, that he certified this is a true copy. No proper certificate of the same having been attached to the papers.

Mr. ERWIN: We desire to note that we have proved by the witness who has examined the original record that this is a true copy of it. It is independent of the certificate.

Mr. PEARSALL: We object to that evidence which proves the contents of a Court paper except by the official seal and certificate of the proper officer.

STUART'S HOTEL, THOMASVILLE, GEORGIA,
SEPTEMBER 22ND, 1900—8 o'clock a. m.

Present: Mr. Erwin, Mr. Callaway, Mr. Pearsall, Mr. Wilkes, Mr. Snodgrass, Mr. Hansell.

HENRY T. CRAWFORD, called for the defense, duly sworn, testified:

Examined by Mr. PEARSALL:

Q. What is your name? A. H. T. Crawford.

Q. Where do you live, Mr. Crawford? A. I live in the town of Moultrie, Colquitt County, Ga.

Q. Where were you born? A. In the County of Johnson, Georgia.

Q. Where have you lived since then? A. Since my birth, I have lived in Hancock County, Dooly County, and Colquitt.

Q. When did you come to Colquitt County. A. About ten years ago.

207 Q. What business were you engaged in after you came to Colquitt County? A. I was contractor and builder in the town of Moultrie.

Q. Were you engaged in any other business up until the time that you bought out the turpentine still of D. M. Reeves? A. Well I had no other business that I call to mind right now.

Q. You bought out the turpentine farm of D. M. Reeves at Cooper, did you? A. Yes.

Q. When did you buy that? A. It was in December, 1897, is my recollection.

Q. December, 1897? A. Yes, sir.

Q. When did you first meet Mrs. Jennie L. Graves? A. In January '98 is my recollection.

Q. Or '99. Which one? A. '98 or '99.

Q. When did you first know John McMullen? A. I don't remember exactly. I met him though after I went to turpentining.

Q. After you went into the turpentine business? A. Yes, in '98 is the first time I believe I met John McMullen.

Q. When did you know William McMullen, about when? A. The first time I ever met William McMullen was something like two years ago is my recollection, hardly that long.

Q. When did you know A. T. McIntyre, Sr. When is the first time you remember to have met him? A. The first time I ever met him was in November, is my recollection, '98 or '99.

Q. Where did you meet him? A. I met him in his office in Thomasville.

Q. Who introduced you to him? A. John McMullen is my recollection.

Q. Was this the time that you purchased lot 383? A. Yes, the day before.

Q. Who came to Thomasville with you at that time? A. I do not remember that any one came with me.

Q. Was John or William McMullen down here at that time? A. John McMullen.

Q. Was William McMullen here? A. No, sir.

Q. At the time of this purchase had you ever known William McMullen? Had you ever met him? A. I think I had met him once. I think he passed my still at Cooper one time that I recollect, and I met him.

Q. Did you have any conversation with William McMullen at that time about any lands? A. If I did I don't remember it.

208 Q. Did you have any conversation with him about any of the lands claimed by Mrs. Graves? A. No, sir.

Q. William McMullen you say was not here at the time of the deed from John McMullen to you to this lot 383? A. No, sir; if he was I did not see him at all.

Q. Did you ever have any conversation with William McMullen about this lot? A. Well, I cannot remember any conversation about that lot with Mr. McMullen.

Q. Before the purchase? A. Before the purchase.

Q. Mr. Crawford, here is a certified copy of an order to S. L. Hayes, administrator estate of A. T. McIntyre, deceased, which authorizes S. L. Hayes to sell lot of land No. 383 in the 8th land district of Colquitt County at public or private sale signed by Aug. H. Hansell, judge Superior Court Southern Circuit and dated October 19, 1898. On October 19, 1898, did you know Col. A. T. McIntyre, Sr. A. No, sir.

Q. Never met him? A. Not personally. I know him by reputation.

Q. Had you met him between the 19th of October, 1898, and the date of this deed from John McMullen to you? A. No, sir; the date of that deed is the first date I ever met him.

Q. Never had any conversation with him previous to that time? A. If I did I don't remember it.

Q. Tell the first time that this lot of land 383 was mentioned to you, by whom it was mentioned, about the purchase of it. A. I cannot remember exactly the day, but it was a few days before I bought it. John McMullen came by the still and told me that he had consummated a trade with Tom McIntyre, Jr.'s, estate to purchase it and was going to Thomasville to have the papers made, and that he would sell it to me for $1500, and I agreed to come down and have the title passed on and if satisfactory would buy it, if not I would reject it.

Q. At the time did you know William McMullen and A. T. McIntyre, Sr.? A. No, sir; only by reputation. Of course, I knew of them. Never had met neither of them.

Q. What position did he hold. Did you know his and A. T. McIntyre, Sr.? A. No, sir; only by repu- of the bank here in Thomasville is my recollection at the time.

Q. He was considered a reputable gentleman was he? A. Yes, I had always heard that of him.

Q. Who passed an order authorizing this sale. By what authority was it passed?

209 Mr. ERWIN: I object to that because it is a matter of law, of court record, if you want to offer a certified copy of the order you can do so.

Q. I want him to state if he knows by what authority Mr. Hayes made this deed. Did you understand at that time?

Mr. ERWIN: I object to the question on the grounds stated.

Q. Did you understand at that time by what authority this deed was made? A. Yes, sir.

Q. What was your understanding at the time as to who passed the order, if an order was passed. A. Judge Hansell passed an order, and I had it examined.

Q. Judge Hansell, judge of the Superior Court of this Circuit? A. Yes, sir; I had my lawyer pass on it.

Q. Who was assisting Mr. Hayes in making this transfer or making this deed, getting the order and writing the deed? A. Col. McIntyre, Sr., was the only one I know had anything to do with it.

Q. He was a lawyer in this town, was he? A. Yes, sir; he was practicing law.

Q. A large land owner in Colquitt County? A. Yes, sir.

Q. A reputable gentleman, so far as you know? A. So far as I knew he had a high reputation.

Q. You never knew anything against the character of Col. MacIntyre at that time? A. No, sir.

Q. What did you do with the title papers submitted to you? A. I take them to Mr. Merrill or Hansell & Merrill.

Q. Lawyers. A. Yes, sir.

Q. For what purpose did you take them to him? A. To have

them examine to see whether or not they were correct titles to that lot of land 383.

Q. What did Mr. Merrill advise you about the title? A. He advised me he thought it was safe titles to purchase under.

Q. Had he advised you that they were not safe titles what would you have done? A. I would not have paid a cent out, except pay him his fee to tell me so.

Q. You paid him to make this examination for you? A. Yes, I had that done and paid him before I purchased the land.

Q. You had not purchased the land at the time you submitted these papers to Mr. Hansell Merrell for examination? A. No, sir. That had to come first.

210 Q. It was on the advice of Mr. Merrell after examining these papers that these papers were a good title, that you purchased? A. Yes, sir.

Q. And you say that you paid $1500 for the land. Was that its fair value at that time? A. Yes, sir; that was all I would have given for it.

Q. Was there anything about the papers or about anybody connected with the transaction that aroused your suspicion that it was not a legitimate and fair transfer of this property? A. No, sir; with the knowledge I had of it it looked to be straight chain of titles.

Q. It is charged in the bill, Mr. Crawford, "that the said H. T. Crawford at the time he took said deed from John McMullen as aforesaid had full and legal notice that the title to said lot of land No. 383 was then and there in your orators and that the said John McMullen had no right, title or interest in the same." Is that true or not? A. It is not true.

Q. You paid for this land with a draft I believe on Peacock & Hunt? A. Yes, sir.

Q. That draft was cashed here by the Thomasville National Bank? A. Yes, sir; I paid for the telegram to them. They accepted it by wire. I telegraphed my factors to accept it by wire. We wanted to wind up the transaction while here and the bankers did not know me.

Q. You did not know Mr. Hayes at that time. He did not know you. The cashier of the bank did not know you? A. No, sir; he did not know me.

Q. You paid the money to John McMullen for this land? A. Yes, sir; I gave him the draft.

Q. Do you or not know of your own knowledge the trade between John McMullen and Mr. Hayes of your own knowledge? A. Well, I do not know more than what I heard, except Mr. Hayes called on me in the office of his bank I think to sign that paper as a witness, but it slipped my mind until I happened to notice it yesterday.

Q. You knew nothing about the terms of that trade did you? A. No, sir; I do not know anything about their trade.

Q. The day that Hansell Merrill examined these title papers was William McMullen in Thomasville? Did you see him there that day? A. No, sir; I did not see him at all.

Q. Nobody here except John McMullen? A. He is the only one I saw of the McMullens.

Q. At that time did you know A. T. MacIntyre, Sr., represented the Misses Graves as their attorney? A. I kind of think I had heard it. In person he had not told me so.

211 Q. Was the name of Mrs. Graves mentioned by Col. MacIntyre up in the office or by McMallen, that you recall, while you were negotiating for this land? A. I do not remember that it was.

Q. You say you would not have paid more than $1500 for this lot of land? A. No, sir; that is my limit. I would not have paid that much if it had not been near my place of business.

Q. Do you remember what the price of spirits of turpentine was at that time? A. I do not exactly, but it was between 24 and 30 cents.

Q. What is it now and what has it been within the last six months? A. I sold spirits before I went out of business at 44 cents.

Q. Nearly twice as much as that? A. Yes, sir.

Q. Rosin about the same proportion? A. Well, rosin was nearly double in price.

Q. When did you first meet Mrs. Graves and where? A. It was in January, 1899, is my recollection.

Q. Where did you meet her? A. Mr. Pidcock introduced me to her on his train at my still place is my recollection now.

Q. The train passed there where you were? A. Passed my place going towards Moultrie and Mr. Pidcock come out on the platform and introduced me to the ladies. Mrs. Graves.

Q. Did you hear Mrs. Graves say anything about the circumstances under which these lands were sold to Cyrus Graves by Joel Graves? A. She told me about——

Mr. Erwin: I object to that conversation because so far as lot 383 is concerned the title to that had passed out of Jennie L. Graves over ten years at the alleged time. In the second place that it is incompetent to vary a warranty deed in fee simple and changing it into a mortgage by parol evidence. A deed speaks for itself as to the consideration, what it is, and even if it were originally a mortgage it would have to be proven in a different way.

A. Yes, sir; she told me. I went to Moultrie as she requested me and she told me the circumstances under which they were caused to have an interest.

Q. What was that? A. She told me that her husband, is my recollection now, loaned Joel S. Graves about the sum of $6000 and time passed, the money was not paid, and that he returned and asked for an advance of $1000 more, that they refused him without his giving them security for the $6000 already obtained and

212 included the additional $1000 with it, and that he did give them the security with six lots of land in Colquitt County.

Q. Lands that they were then claiming? A. She said that was the land and that was the reason she claimed them.

Mr. Erwin: I object to that testimony on the ground that it is incompetent to vary the terms of a fee simple deed by testimony of

that sort, and that evidence itself if true after a lapse of twenty years would make the deed a complete title and the equity of redemption would be done, and it is therefore incompetent at this date to change the effect of that deed by oral testimony either by admissions or otherwise, and that even if it was so modified into a mortgage by such statements that the title, the fee simple title by the terms of the deed would be passed and be as complete in the complainants at this time, more than twenty years thereafter, as if there had been no such. The evidence is irrelevant and immaterial.

Q. Did you know A. T. MacIntyre, Jr.? Did you ever meet him personally? A. I do not think I ever did. If I did I do not remember it.

Q. How did you come into possession or claim still lot 353? A. The south half of 353, I purchased it with the turpentine place.

Q. From Mr. D. M. Reeves? A. From Mr. D. M. Reeves, December 18, 1897, is my recollection.

Q. How long had that turpentine still been on this lot of land at the time of your purchase? A. I think it had been there about something like five years, four or five years.

Q. The still location itself was on this lot? A. Yes, sir.

Q. This location had been fixed there I believe by Autrey & Autrey, had it not, before Mr. Reeves? A. I am not certain. I think Mr. Autrey was interested in the place, A. D. and C. H. Autrey at times.

Q. That has been used continuously since the plant was first established there until the present time as a still location for this place? A. Yes, sir.

Q. Do you remember what you agreed to pay Mr. Reeves for the south half of this lot 353, the still lot? A. I cannot remember exactly, I have a record of it. It is something like $600 or $700.

Q. For this 245 acres on this still lot? A. For the south half; yes, sir.

213 Q. That was a fair valuation for it at that time, was it? A. Yes, sir; a good price for it.

Q. Do you know any other claimant to that lot, or that any relation existed between the firm of MacIntyre & MacIntyre or either of them and the Misses Graves? A. No, sir.

Q. You think you have paid for this lot 383 at the time you paid, its full value? A. Yes, sir; I am satisfied I did.

Q. And that if there was any improper business relations between Col. MacIntyre or A. T. MacIntyre, Jr., and these ladies and William McMullen or John McMullen, you knew nothing about it? A. I had no knowledge of it.

Q. You say you have never talked with William McMullen about these lands until this suit was filed? A. If I did, I cannot remember it. I am certain he did not have anything to do with negotiating the trade.

Q. So far as you know, with you? A. With me, I am certain he did not with me.

Cross-examination.

Mr. ERWIN:

Q. Mr. Crawford, this still that you are speaking about, you claim to have bought from Reeves, I believe, was it not? A. Yes, sir; D. M. Reeves.

Q. That is on the southwest corner of lot 353, isn't it? A. On the south side, kind of in the southwest corner.

Q. That corner of lot 353 touches the corner of lot 383, does it not? A. Yes, sir.

Q. That is the same southwest corner? A. Yes, sir; corners with it.

Q. Have you got that still there? You wrote a letter did you not to Mrs. Jennie L. Graves or to one of her daughters offering to purchase lot 353, did you not?

Mr. PEARSALL: We object to that question unless the letter itself is produced or accounted for. We object to the witness going into the contents of the letter unless the letter itself is produced.

A. I have no recollection of writing to them. I did not know where to write.

Q. Did you not state in Macon, Georgia, at the Lanier House, in the presence of Mr. Callaway and myself and in the presence of Mrs. Graves that you had written a letter to them prior to
214 your purchase of lot 383, some time prior to that? A. I may have, but I do not remember it.

Q. That you had written to them offering to purchase that lot 383 and that the letter had come back to you. Now think of that. Do you remember it? A. I may have. If I did I don't deny it at all. I do not remember though.

Q. I will ask you aside from remembering the conversation. Is it not true that some time, whether it was when you first got the still or prior to that time, didn't you write them a letter and offer to purchase lot 383 from them? A. No, sir; I do not think I did. Now it strikes me I wrote them a letter after I had bought that lot, something concerning 354. I have a little recollection of that. I cannot give the date. I do not remember. I did not get any reply I am satisfied.

Q. Didn't you state that prior to your having purchased this lot 383 that you had heard about their claiming title to lot 383 and that you had written them a letter and that it had come back to you unopened and that after that this John McMullen transaction came up, and that you did not know that they had the title, John McMullen stating that he had the title that you then bought it in good faith? A. No, I do not acknowledge that statement.

Q. You positively deny Mr. Crawford that at the Hotel Lanier, in the parlor of the Hotel Lanier, in the presence of the Misses Graves, either of them, and Mr. Callaway and myself, that you stated that you had written a letter to Mrs. Graves or her daughters or one of them and asked them to sell you lot No. 383 or what they would take for it? A. I do not believe I was ever with you, Mr. Callaway and them in the parlor in my life.

Q. Do you recollect being there in the Hotel Lanier and agreeing with Mr. Callaway and myself about the payment of the fees to the surveyor for surveying a lot down there? A. I remember agreeing to pay for half of running that line between them lots.

Q. That is what I mean? Well, now at that time you remember we were in the Hotel Lanier. You remember being up in the parlor of the Hotel Lanier? A. I remember being there with the old lady. The two young ladies were off with you and Mr. Callaway at the time.

Q. At the time, the particular time that this conversation occurred, wasn't it in the presence of the old lady in the parlor there, weren't you in the parlor and Mr. Callaway and myself and the old lady? A. No, sir; I do not think you and he were in there.

215 Q. Or the young ladies? A. I was up there with the old lady.

Q. And Mr. Callaway and I were talking to the younger ones? A. Yes, sir; you were talking, and walking.

Q. You deny being in the parlor with any of the younger ladies with Mr. Callaway and myself before, and making that statement in our presence? A. I do not remember. We had our talk, is my recollection about surveying down stairs about the office.

Q. Did you make that statement down stairs, in the little parlor down there at the sitting room at the door. Did you make such a statement in there? A. I do not remember the statement you have asked me about at all.

Q. You heard Mr. Hansell Merrill's testimony on yesterday before the examiner? A. Yes, sir. I heard part of it I think.

Q. You have heard his statement about his having written that certificate for you for the purpose of your sending the deed to the cotton factors in Savannah from whom you were borrowing the money; that was the purpose for which you got it? A. No, sir; he did not say anything about borrowing money.

Q. Well it was to send it there for the purpose of security to let them know what land you had, something of that sort? A. If they wanted to know anything about it, to show I used caution. I asked for advances from the factors.

Q. That is what you got the certificate for? A. No, sir.

Q. You deny the statement that is what you said you wanted it for? A. That was not the first motive. The first motive was to protect myself in putting out $1500, getting a chain of titles that was safe, is the reason I went to him.

Q. You heard Mr. Merrill's statement in regard to that, and he identified those deeds in that chain which he says in his testimony was the chain of title submitted to him, I mean particularly the deed or papers purporting to be a deed from Joel Graves to Read, etc., down either to the deed from Hayes, administrator, to John McMullen or John McMullen to you, that chain of title, was that the chain of title submitted to him. A. That was the chain of title.

Q. Did you take those papers over to him yourself? A. Yes, sir.

Q. Did anybody else carry them over there to him with you? A. I have no recollection of it.

Q. You went by yourself and carried them over to him?
216 A. Mr. John McMullen may have went or he may have come in later, but I do not remember any one going with me.

Q. Neither Mr. Hayes nor Col. MacIntyre went over with you? A. I have no recollection.

Q. No one else that you remember unless it was Mr. John McMullen? A. I think very likely he came up in the office but I do not think he went with me.

Q. You carried the deeds over yourself? A. Yes, sir.

Q. You had not paid for that land until after Mr. Hansell Merrill examined them? A. No, sir.

Q. Now, if that be true how did you get that deed from Hayes, administrator, to John McMullen? A. It was not signed, I do not think. I think it was just wrote out, is my recollection, both of them.

Q. Then Mr. Merrill you think passed on a title with deeds in the chain which had not been witnessed? A. I think I told you the truth about the matter.

Q. Well, now that must be so, that that deed from Hayes, admintrator, to John McMullen, if it was not signed, then he was passing on a deed that was not signed or witnessed at that time? A. I think I asked him to pass on it. It might have been just a deed to me that was not signed. I do not think, is my recollection, that the deed was signed at the time. I wanted to ask him would it be correct chain of titles if signed to H. T. Crawford, is my recollection.

Q. Mr. Crawford, isn't it true John McMullen told you he had a half interest in that lot before you made that trade? A. I think he told me that whether he had half interest or whole interest he would get the title.

Q. Didn't he tell you before you went over there to Thomasville. Didn't he tell you he had a half interest in that title, before you made the trade, now before the deed was made to John McMullen, didn't he tell you he had half interest in that lot? A. I kind of think he did, is my recollection.

Q. But you never got any other chain of title but that particular chain of title that was identified by Mr. Merrill? A. That is the chain of title I got and had examined.

Q. You knew that John McMullen had not paid the consideration of that deed to Hayes until after you had paid him, didn't you? A. Did I know it before hand?

Q. You knew at the time you paid that $1500 that that money was going towards paying that $500 to Hayes, didn't you? A. I do not remember any understanding about that.

Q. Didn't you know that John McMullen had not paid
217 the $500 at the time that you traded with John McMullen for the lot? A. No, sir; I do not think I knew that. I think the deed was signed before mine was. I think that it was witnessed in the back of Mr. Hayes bank.

Q. Then your impression was that when you traded with John McMullen that the deed to John McMullen had already been signed up? A. I am pretty certain I witnessed the deed of John McMullen before I taken these papers up—

Q. Then you had that deed after it was signed and witnessed up to carry to Mr. Merrill? A. My recollection is I carried two deeds. I am not certain whether they were both signed or not. It strikes me they were not, at least one of them, with the chain of title to Mr. Merrill's office.

Q. Well, now if that was not signed up you had agreed with John McMullen to make a trade with him before that deed was signed up? A. Oh, yes, I made the trade with him. I agreed to buy the lot provided the title was satisfactory before I came to Thomasville. That was my business here.

Q. And then when you got to Thomasville you witnessed the deed from Hayes to John McMullen? A. That is my recollection.

Q. Then you took that deed over to Hansell Merrill to look at it together with the draft of your deed? A. Yes, I recollect taking it, but I do not remember for certain that I taken them both, whether they were both signed or not. I am not positive.

Q. Don't you know Mr. Crawford that the $1500, part of the $1500 was intended for John McMullen as consideration for the deed from Hayes to John McMullen? A. Do I know it now?

Q. Or know it then? A. No, sir; I am not willing to swear I knew it then until after the trade was made between me and John McMullen, but I am satisfied it was because I saw the manoeuvers after that. I saw manoeuvers after that enough to make me satisfied it was done.

Q. You had just met Mr. Hayes? A. I had just met Mr. Hayes that night, and then the trade was finished up in the day.

Q. That deed bears date on the 9th? A. That is my recollection.

Q. And the certificate of Mr. Merrill bears date on the 10th? A. Yes, sir.

Q. Then if you signed that on the 9th, that deed must have been signed up when you took them to Mr. Merrill? A. I am not certain that deed was dated the day I signed it. It might have been written the day before, and I might have witnessed it the
218 next day. I could not swear about that. I did not notice that date.

Q. You had just met Mr. Hayes that night? A. Yes, sir; that evening, or that night may be, of the 9th.

Q. Mr. Hayes did not know you well enough to let you take off a deed that was signed, sealed and delivered and carry it away until he got the money, did he? A. You will have to ask him about that. He did not cash the draft without having it accepted by wire.

Q. You went on the lot 383 and boxed it after you got this deed from Hayes, administrator, in 1898? A. After I got McMullen's deed I boxed it.

Q. After you got John McMullen's deed. It is boxed now. The

timber is not cut, is it? Or is the timber cut? A. The timber is not through turpentining yet.

Q. It has just been turpentined? A. It has one more year of turpentine on it yet.

Q. You turpentined it in 1898? A. In the winter of 1898, spring of 1899, I believe, is the time it was cut.

Q. Since this suit has been filed, did you or not on or about the 28th of August, 1899, deliver whatever possession you had in that lot 383 to Mr. W. W. Asburn, one of the parties defendant in this suit? A. I sold Mr. Ashburn the turpentine privilege on that lot when I sold my turpentine business to him, I do not remember the date.

Q. It was, or wasn't it about August of last year? A. My recollection is it was about the first of September, 1899, of last year.

Q. Since that time has Mr. Ashburn been cutting turpentine off that lot? A. Why I suppose so, I have not heard anything to the contrary.

Q. Don't you know, haven't you been about there? A. I have not been in his employment or noticing his business, but that is my understanding that he was, knowing it was his property.

Q. Have you been along that way at all to know if it is being boxed or being dipped? A. No, sir; I have not seen them dipping it nor hauling or anything, but I am satisfied it is going on all the same.

Q. You turned over or delivered whatever possession you had to him about September 1, 1899? A. Not what possession, but the turpentine privilege as I told you. I own the saw privilege to the land yet.

Q. You also executed some kind of deed to McCormick, who is a party to this suit? A. I executed to him a warranty deed,
219 but I have since bought it back from him. I own half interest in the land now and him and his mill partners own the other half.

Q. Now you boxed the whole of lot 383 since? A. Yes, sir; all that I know of it.

Q. You say you have lived down here ten years? A. It will be ten years November coming.

Further testimony to be taken at Moultrie, Georgia, at 12 o'clock to-day.

MOULTRIE, GA.

Present: Mr. Erwin, Mr. Callaway, Mr. Hansell, Mr. Snodgrass, Mr. Pearsall, Mr. Wilkes.

HENRY T. CRAWFORD.

Cross-examination continued.

By Mr. ERWIN:

Q. Mr. Crawford, on the preliminary hearing for injunction in this case you offered a certified copy of what purports to be a deed from D. M. Reaves to yourself, from the records of the Superior

Court of Colquitt County, the deed purported to be dated the first day of December, 1897, did you not? A. I do not know that I fully understand the question.

Q. I say the deed under which you claimed at the preliminary hearing a part of lot 353 there in the 8th district of Colquitt County was a deed a certified copy of which you offered at that preliminary hearing, purported to be a deed from D. M. Reaves to yourself dated December 1, 1897? A. Yes, sir; we offered it on account of the fact I had got the deed destroyed or lost.

Q. The deed itself had been lost or destroyed? A. Yes, sir. I think it got burned in my commissary. I have never seen it since.

Q. And that was for the south half of lot 353? A. That is my recollection. We had to get a certified copy.

Q. That was part of the lot which you are laying claim to, the south half of the lot? A. The south half of lot 353.

Q. On which the still is? A. Yes, sir.

Q. Now at the time that you took possession, you took possession under that deed? A. Yes, sir; under the original.

220 Q. At that time had that south half been turpentined? A. Oh, yes, sir.

Q. Had it been completely turpentined, or did you turpentine it at all after that? A. Completely turpentined and sawmilled.

Q. And completely sawmilled, that south half of lot 353? A. Yes, sir.

Q. Then the price which you paid for the south half, $650, was for a half of a lot after it had been turpentined and sawmilled also? A. Yes, sir.

Q. Were you claiming at the time this suit was brought any part of the north half of lot 353? A. No, sir.

Q. Who was doing anything to the north half of lot 353 at the time the suit was brought, the lot adjoining the lot you had your turpentine on? A. I think Mr. Morrison had turpentine leases on it and was attending the boxes.

Q. I call your attention to this statement in the answer of Mr. John W. Hightower to the bill in this case:

"And now comes John W. Hightower and for answer to said bill and rule to show cause, says: that it is true that for the Union Lumber Company, a partnership of which he is a member, and which is about to be organized as a chartered company, he did take a lease for said company from W. W. Ashburn for the timber privileges on the north half, 245 acres, of lot 353, in the 8th district of Colquitt County, Georgia; but neither he nor his said company has cut any timber on said lot, nor do they intend so to do until the rights of the parties have been determined; so far as he is advised, the timber on said north half of said lot is still undisturbed, except that it was turpentined prior to the aforesaid lease."

Now, referring to that answer of Mr. Hightower, do you know at what particular time Mr. Hightower for the Union Lumber Company had any kind of possession or did anything to that north half of lot 353? A. No, sir; I am not certain.

Q. This answer appears to have been filed in Court on the 10th

lay of May, 1899. Now, do you know whether the turpentining of hat north half of lot 353 was done under Mr. Ashburn or not? A. do not of my own knowledge.

Q. This part of the statement of Mr. Hightower in reference to he fact that the timber on the lot, on the north half, was undisturbed at the time of the filing of this answer, is that true?

21 A. So far as the saw mill timber was concerned, it was true.

Q. Then, what had been done to the north half was simply he turpentining of it? A. Yes, sir; it was being turpentined at hat time.

Q. Do you know when that was in 1899; when did that turpenining of that north half commence? A. I do not know just what ate. Some of it had been run about two years, or may be three ears, before some of the latter part had been cut. Two or three ts of boxes on it.

Q. But the whole of the north half had been boxed up to the time hat this answer was filed? A. It had all been boxed.

Q. The timber was on it, and the south half had not only been oxed, but the milling timber had been cut out? A. Yes, sir; before purchased it.

Q. There is still the undersize trees on it. A. Yes, there is sapings on it.

Q. How small a tree, as a usual run, is under milling size? What o you call milling size? A. Different specifications. Say somehing like ten inches up is considered milling size, I believe.

Q. And under that would not be considered milling size ordiarily? A. That is sometimes the case. Sometimes there is no reriction.

Q. Now, this turpentining on the north half had been going on hen for about two years, 1897-8 and part of 1899, or did it antedate 897? A. It was cut before 1897.

Q. About 1896? A. 1895 or 6, I think. It must have been boxed, rom the look of the boxes. I think they were second year boxes hen I went to turpentining in the fall of 1897.

Q. That would make it about the winter of 1896? A. Somehere along in there I put the time, the best I could tell about the eight of the boxes.

Mr. ERWIN: I ask to that this certified copy from the records of olquitt County of what purports to be a deed from D. M. Reaves H. T. Crawford, December 1, 1897, identified by Mr. Crawford as eing the one under which he claimed at the preliminary hearing, be identified and marked as an exhibit for identification. Exhibit o. 18.

Q. Mr. Crawford, at the same hearing, as part of your title

22 claimed by you to lot 353, you put in that deed which I now hand you, dated the 26th day of July, 1895, from D. A. wtry to Awtry & Reaves, purporting to convey the south half of t of land 353 in the 8th district, did you not? A. My mind is ot clear about the chain of title. I suppose that looks to be like ne of them. I do not recall the chain of title at present.

Q. If you are not claiming under that one, tell me what title yo are claiming under? A. I did not say I was not claiming unde it. I cannot recollect the chains of title at present to that half of l of land.

Q. Look at that deed produced by the examiner from the offici files of Court in the papers offered at the hearing on the rule *nis* which purports to be a deed dated the 26th day of July, 1895, b tween D. A. Awtrey and Awtrey and Reaves, a firm composed of D A. Autrey and D. M. Reaves, marked on the back, warranty dee from J. A. Autrey to D. M. Reaves. State whether you claim or d not claim under that deed? A. If it is in the chain of titles to th south half of lot 353 in the 8th district of Colquitt County back o Mr. Reaves, I do; but as to being familiar with the chain of title I am not.

Q. You do not know whether you claim under that deed or not A. If Mr. Pearsall, my lawyer, filed it, I do.

Q. Look at this document, purporting to be a deed from C. H Autrey to D. A. Autrey, dated February 2, 1894, purporting to b signed, sealed and delivered in the presence of T. B. Daughtrey, i P. Co., Ga., and purporting to be recorded on February 17, 1894, i the clerk's office of Superior Court of Colquitt County. State whethe you are claiming under that deed, that being one of the deeds pro duced by the examiner from the files of Court as being offered in evi dence at the hearing on the rule *nisi* in this case? A. I have to sa the same about that I did with the others. If my lawyer filed tha in the chain of titles, I claim under it.

Mr. ERWIN: I desire to have these two deeds marked exhibits fo identification.

Deed from D. A. Autrey to Autrey & Reaves, marked Exhibit No 19.

Deed from C. H. Autrey to D. A. Autrey marked Exhibit No. 20

Mr. PEARSALL: You will note our objection to the question
223 and answer as to these deeds, as being irrelevant and imma terial until they are tendered as evidence of our title.

Q. You were claiming title to lot 353 at that hearing, for the south half of the lot? A. Yes, I claimed the south half of that lo at that time.

Q. You or your attorneys did, for you put in the chain of titl under which you claimed, did you not? A. I do not know that he put it all in.

Q. He did put in a chain of titles? A. He put in some papers

Q. Under which you were claiming at that time. Look at this document, produced from the files by the examiner in this case, in the record of the case, from the hearing on the rule *nisi*, which docu ment purports to be a deed from M. M. Blanton to Charles H. Aut rey for south half of lot 353, and purporting to be dated the 30th day of November, 1893. Did you claim that south half of lot 353 under that claim of title at the time of this rule *nisi* hearing? A. I acknowledge just as I did on the other two.

Q. That is, if those were put in evidence at that hearing by your attorney, you did claim under it, and that is the chain of title under

which you claimed? A. If it is part of the chain of titles to D. M. Reaves, then I will have to claim under it. I bought from him.

Mr. PEARSALL: You will note our objection to that deed as to the former deed.

Q. Look at this document, also produced by the examiner from the record in this case from the hearing on the rule *nisi;* this document purporting to be a deed from P. S. Bower to M. M. Blanton for an undivided half interest in lot of land 353 in the 8th district of Colquitt County, and state if that is the deed under which you claimed at that hearing on the rule *nisi* in this case an interest in the south half of lot 353? A. I will have to acknowledge as I did the other three.

Q. Were you not present in Court at that hearing at Macon? A. I was.

Mr. PEARSALL: We have the same objection to that.

224 Q. I call your attention to the date of this deed, which purports to be dated—What appears on that deed? A. The 14th of November, 1892.

Q. I will ask you to look and see whether you see any figure under that and "2" written over. State whether or not it does not appear that there is a two written strongly over a 3, so that the date appears to be changed from 1893 to 1892? A. I see a stain of ink across where there would be a portion of a three if there was any, but I could not tell what was under it.

Q. It looks like there has been a change of figure there, does it not, after the letters printed, eighteen hundred and ninety—then the next figure appears to have been changed in some way, doesn't it? A. The ink seems to be splotched. I cannot tell what that is.

Mr. PEARSALL: Note our objections to the evidence about the change of figure as being irrelevant and immaterial.

Q. Do you know how that came to be done in the way in which it is done, the 2 put there? A. No, sir; I have no knowledge at all.

Q. You have no knowledge of the way the two was changed? A. No, sir.

Q. This deed appears to have been recorded on the 5th day of December, 1893, doesn't it? Filed for record on that date and recorded on the 6th day of December, 1893? A. That is the record marked.

Q. Were you acquainted with the south half of lot 353 when the Autreys were on it with their still, the south half of lot 353 in the 8th district? A. I do not know that I was. I do not remember ever going there while they owned it.

Q. When did you go there? When did you see lot 353 first? A. I do not remember the first time I ever saw it, except in passing it. The first time I ever went on it with a view of looking at it for purchase was in November or December, 1897, is my recollection.

Q. That was the time Mr. McMullen went by there; I mean to say it was after November or December that Mr. McMullen went by

there that you saw him go by your still? A. That was some time after that that he came along there.

Q. Well, you bought lot 383 from Hayes, administrator, you say, in 1898? A. No, sir; I did not say it.

Q. From John McMullen in November, 1898? A. That is my recollection.

225 Q. You say you had seen Mr. William McMullen at the still prior to that time, so as you moved there in November, 1897, Mr. William McMullen's visit by your still at the time you speak of was between those dates, wasn't it? A. Yes, sir; you were asking me about the Autrey land.

Q. I was asking you about it until you skipped over it just now. *Q.* [A.] Yes, sir; it was between the time that I bought the half lot and the time I bought the whole lot that I saw John McMullen and William McMullen.

Mr. ERWIN: I desire to have these two deeds about which I have questioned Mr. Crawford, one from Blanton to C. H. Autrey and the other from B. S. Bower to Blanton, marked as exhibits for identification.

Deed from Blanton to C. H. Autrey, marked Exhibit No. 21.

Deed from B. S. Bower to Blanton, marked Exhibit No. 22.

Q. Now, Mr. Crawford, if there are any other deeds except those we have just gone over under which you claim any title to lot 353 in the 8th district of Colquitt County, I want you to state which they are now.

Mr. PEARSALL: That question is objected to as being illegal, irrelevant and improper.

Mr. ERWIN: That is the issue in the case. He claims title. He has got to state what he claims it under.

Mr. PEARSALL: No, sir; I think we have to do it by written evidence.

Q. Go ahead and state, Mr. Crawford, and get through with it. A. I claim under the general title that D. M. Reaves had. I bought from him. I could not claim otherwise. I have not bought it but once.

Q. Here is that chain of title. If there are any other papers or documents, I call on you now to produce them and state to the Court what they are. There are the papers you had at the hearing. You have got your counsel. You have the privilege of conferring with him. You can stop now and confer with him. I call on you to answer the question now. What are the deeds under which

226 you claim title to any part of lot 353?

Mr. PEARSALL: We object to that question as being illegal and irrelevant. Counsel cannot go into private affairs of the witness until he has introduced those title papers themselves in Court; that the plaintiff must recover upon the strength of their own title, and not upon the weakness or defects of defendant's title, and that they cannot go into an examination as to what he has or what he will

hereafter claim, or may claim at this time, until those title papers are tendered in Court.

Q. You can state, Mr. Crawford, anything that you may know about, if you know, other papers, if there are such title papers, or what you did with those title papers, if you had them. A. I will answer the question as intelligently as I can if you will allow me. I shall claim—

Q. I am not asking you for any other testimony otherwise than the chain of title under which you claim. What are the papers that you claim the chain of title under to lot 353? A. I have answered that several times.

Mr. PEARSALL: Answer it again, Mr. Crawford.

A. I shall claim the south half of that lot in question under all the titles that are in my power, under the purchase to me from D. M. Reaves, that I may put in according to law.

Q. What are those papers? A. I am not able to say at present.

Q. I ask to have it noted that we give the witness time and to confer with his counsel and to examine the papers which are now in the possession of the examiner, all of which were offered on the preliminary hearing for injunction, and call upon him to state the papers under which he claims title to the south half of lot 353, or any part of lot 353.

Mr. PEARSALL: Defendant's counsel denies the right of the complainants to make any such demand until we have introduced the papers, or until they themselves have made out a case that
227 they are the owners of this land. We are in possession and presumption of law is that we are the owners of it, and that they cannot take the witness upon the stand and by any such examination require him to exhibit his title papers at this time.

Q. Do you refuse to look at your papers now, the papers you have put in at the preliminary hearing, and state what papers you claim the south half of lot 353 under, or will you look at your papers now, and the papers in Court, and state what you claim it under?

Mr. PEARSALL: We will take that time.

Mr. ERWIN: I will suspend until you take that time.

Do you insist on having until next week before answering the question?

Mr. PEARSALL: I do not know whether I will or not.

Mr. ERWIN: I will examine him further on that particular point, and if he is claiming notorious possession of that and does not know the deeds under which he is claiming it, I think it is a very curious possession.

Mr. PEARSALL: That is a conclusion of counsel, of course, as to that.

Mr. PEARSALL: I can state what we will claim under. We claim this lot of land under a grant from the State of Georgia to Eli Graves; from Eli Graves to Joel S. Graves; from Joel S. Graves to Cyrus Graves; from Cyrus Graves to Abram Graves; Abram Graves, by administrator, E. O. Thompson, to Bruce & Bower; Bruce died,

leaving three heirs, Betty Bruce Daniels, Dr. W. W. Bruce and their mother, Rebecca Bruce. Rebecca Bruce and Dr. W. W. Bruce divided the estate of his father, by which their interest in this lot of land was conveyed to Betty Bruce, afterwards Betty Bruce Daniels, and then from P. S. Bower to M. M. Blanton, and from Betty Bruce Daniels to A. M. Watson and MacIntyre, and from Blanton to C. H. Autrey, C. H. Autrey to D. A. Autrey, D. A. Autrey to
228 Autrey and Reaves; Autrey and Reaves to D. M. Reaves; Autrey and Autrey to D. M. Reaves; D. M. Reaves to H. T. Crawford. And in addition to that, our prescriptive title to this land. That is as I remember. That will be the chain of title that the defendants will rely upon to this lot 353, and actual possession.

I will state further that I have not examined as to whether or not the title has ever been divided or not between Autrey and Ashburn or this defendant and Ashburn; whether the defendant really has a title to one-half interest in the whole lot or whether it has been divided and he claims the south half. I am not sure of this, and have not had an opportunity to find out whether that division has been made; but that will be our chain of title in addition to prescriptive title, which we have set up.

Q. Now, Mr. Crawford, look at this document produced by the examiner from the hearing on the rule *nisi* in this case, from the record, which purports to be a deed from Betty Bruce Daniel to A. M. Watson, dated the 30th day of June, 1890, to an undivided one-half interest in lot 353 in the 8th district of Colquitt County, which purports to be headed Georgia, Thomas County, and signed before L. E. Dixon and H. Garvenati, Judge of the County Court.

Mr. Pearsall: We object to that evidence as being irrelevant, immaterial and illegal.

Q. I am asking you whether or not you claim under that deed?

Mr. Pearsall: I can state as I have stated, if you desire me to.

Q. I am asking him specifically whether he claims title under that deed or not?

Mr. Pearsall: That question is illegal, improper and irrelevant.

Q. You can answer it. Just state if you know, if you do know? A. I have answered the question as near as I could.

Q. I am asking you again. A. That I claim any right that D. M. Reaves might have. I bought him out. I bought his
229 title, any right he might have to the lot, of course, I claim under him.

Q. You do not know whether you claim under this deed or not? A. I do not know that this has direct connection with that half lot or not. I have never read it.

Q. You do not know whether you claim under it at this time? A. I am not an expert in handling papers myself.

Q. Look at this document, purporting to be a deed dated the 5th day of November, 1890, from A. T. MacIntyre, Jr., and A. M. Watson to W. W. Ashburn, purporting to convey, among other things,

an undivided half of lot 353. Do you claim under that deed? Do you claim any interest in lot 353 under that deed?

Mr. Pearsall: We say the question is improper and illegal, and the evidence sought to be elicited is improper and illegal evidence, and we object to the course the examination is taking.

A. I can only say I claim as before under all the lawful rights of D. M. Reaves. I am holding under him.

Q. Was that one of the deeds you were claiming under at the time of the rule *nisi?* A. I do not know, sir, whether it was or not.

Q. You really did not know, while you were in possession of that south half of lot 353, know what titles you were holding under, otherwise than you had got from D. M. Reaves? That is all you knew about it? A. I did not say so.

Q. I am asking you now? A. If that was all I knew about it?

Q. You say you do not know now, except as you claim the Reaves title, you do not know what title you claim under, except that you bought from D. M. Reaves? A. You say I claim under D. M. Reaves; I purchased from him.

Q. Behind the Reaves title, do you know what title you claim under? State whether or not, Mr. Crawford, you know what the back titles were? A. I have said several times I was not familiar with the titles.

Q. You are not able to state what particular title you claim under, otherwise than the fact that you bought from D. M. Reaves? A. I stated that I do not know that I would know a perfect chain of titles of my own knowledge. I would have to get some attorney to pass on them before I would know.

230 Q. I do not care whether it be good, bad or indifferent, I am asking you if you know what particular paper title under which you were claiming behind the deed from D. M. Reaves to you. Do you know it now? A. I don't know now.

Q. Did you know it then at the time, while you were in possession of that lot, the south half of lot 353; did you know what particular chain of titles under which you claimed was behind the deed from Reaves to you? A. I do not know that I did know the full history of them all.

Q. I am not asking you whether you know the full history, but did you know the particular papers you were claiming title under? A. I was claiming title——

Mr. Pearsall:

Q. Answer the question, yes or no? A. I claimed under the title that I bought and got from Mr. Reaves, and any strength it might have had, any claim of title, of course, I claimed under it.

Q. That is true, you claimed under Mr. Reaves; but now did you know what particular chain of title back of Mr. Reaves you were claiming under, what particular papers you were claiming under? A. I do not know that I did know them all.

Q. I will ask you to have these two deeds marked exhibits for identification. The deed from Betty B. Daniel to A. M. Watson,

Exhibit No. 23, and from A. T. MacIntyre, Jr., and A. M. Watson to W. W. Ashburn marked Exhibit No. 24.

Q. Where did you get the turpentine from to run that still on the corner of lot 353, after you bought from Reaves? A. I got it out of boxes in timber five or six miles around, different lots.

Q. You were boxing timber upon a great many lots five or six miles around? A. Some of it as much as five miles, may be as much as six.

Q. Then you got some off of lot 383, didn't you, in the 8th district? A. Yes, I got turpentine off of that lot.

Q. How long was it that John McMullen came to you about buying that lot 383 before you went to Thomasville with him to close up that trade? A. I do not remember, sir, about the date. It seems to me it was a week or two before we went down there. I could not be positive. I do not remember.

Q. Wasn't it about a month or so after that that they were talking about arranging it, you and he? A. I told you what I knew about it at the first outset. That is my recollection.

231 Mr. PEARSALL: Just answer the question, Mr. Crawford.

Q. What was your answer to that? A. That I did not remember as to the date, but it was something like a week or so. It might have been a little more.

Q. It might have been a month? A. Possibly it might have been a month. I do not remember.

Q. Mr. W. W. Ashburn lives here, does he not? A. No, sir; he lives in Atlanta now.

Q. He has a place of business here, hasn't he, W. W. Ashburn? Isn't he in the bank? A. I think he has an interest in several enterprises here, milling and turpentining, but he does not call this his home.

Q. Do you know whether he is here now or not? A. I do not. I have not seen him.

Redirect examination.

Mr. PEARSALL:

Q. You bought lot 353 in buying out the turpentine location of Mr. D. M. Reaves, didn't you? A. Yes, sir.

Q. That was part of the still location? A. Yes, sir; that went in with the purchase of the plant.

Q. In addition to other timber and timber privileges? A. Yes, sir.

Q. You say you paid $650 for the south half of lot 353? A. That is my recollection.

Q. What that a fair valuation for that property? A. I think it was.

Q. Mr. Reaves accepted it and you paid it? A. That is my recollection, it was.

Q. Were there any improvements on that property at that time,

any houses, stills or anything? A. The half on which the still was located?

Q. What was on it? A. Residence and shanties, commissary, cooper shop, sheds, platforms, etc.

Q. Mr. Reaves accepted $650 for his interest in that lot and these improvements? A. I am not certain as to the improvements. I believe there was something extra for the improvements, but I am not certain but what that included it all, $650; somewhere about that.

Q. The south half had been occupied by the still for three or four or five years at the time you bought it? A. It appeared to have that age on it, the buildings.

232 Mr. ERWIN: I object to your leading your own witness.

Q. Do you remember the time C. H. Autrey built his still on this lot? A. I was at Moultrie, living here, but I do not remember the date.

Q. That has been occupied ever since that date, has it? A. Yes, sir; at all times I have been passing on the railroad it would be in operation.

Q. Now, these title papers to lot 353, which Mr. Erwin has been questioning you about, as to what you claim under them; you say you bought the title of D. M. Reaves, whatever that was? A. Yes, sir; that was the title I bought.

Q. You do not remember what his chain of title was. A. No, sir.

Q. You cannot recall it right now without refreshing your memory some? A. I could not recollect the chain of title.

Q. The timber that you used in your still which you say you got five or six miles off, that was not an unusually great distance for working timber for a still, was it? A. That was considered in reach of a turpentine still.

Q. You had timber nearer than that? A. Oh, yes.

Q. From 383? A. Yes, sir; that was about the farthest I worked, about five or six miles.

Q. Now, when you went to Thomasville with John McMullen to purchase this lot 383, you stated you had the titles examined by your attorney there. For what purpose were they examined, Mr. Crawford? A. They examined them to see if they were a good chain of title which I could purchase under with safety.

Q. That is, in making that investment, you took that precaution? A. Yes, sir.

Q. Have you ever given a mortgage or lien on this particular lot 383? A. No, sir; I have not.

Q. The examination was not made for that purpose? A. No, sir; it was not made for that.

Q. The money for this timber, the money you paid for this land 383, was telegraphed to you from Savannah, wasn't it, before your factors knew you had purchased this lot? A. Yes, sir.

Q. You had a credit with them to the amount of $1500 aside from this lot of land? A. Yes, sir.

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Mr. ERWIN: I object to all that testimony as being irrele-
233 vant and immaterial and an attempt to prove telegrams and papers by parol, and to the question as leading.

Q. Mr. Crawford, this deed that was identified yesterday by Mr. Merrill, the first deed which he posted together, did you see Mr. Merrill arranging that paper? A. I did.

Q. That is the deed from Joel S. Graves to John J. Read or Redd to this lot 383? A. That is my recollection.

Mr. ERWIN: You have called it as though the deed had a J. That deed has no J. in it.

Q. Something was said by Mr. Erwin about Mr. William McMullen coming to your still. Did he ever speak to you anything about lot 353 or lot 383? A. Why, he may have, but I do not remember it if he did.

Q. Before the purchase by you of the lot 383 in Thomasville? A. I do not think he ever did. I do not think I ever met him more than once before. I think I had met him before that.

Q. You never had any conversation with him about any of these lands? A. I do not think more than just—I do not think I ever met him more than he just passed *by* [my] still place there, is my recollection, one day on his way home from some place he had been.

Q. The allegation in the bill about the history of the Graves family, the preachers in the family and other matters in there, did you know anything about those matters set up in the bill? A. No, sir; I did not know anything at all.

Q. Is your claim in good faith, after paying value for your interest in 353 and for 383? A. Yes, sir; I bought it in good faith and paid for it.

Cross-examination.

(Mr. ERWIN:)

Q. I believe you denied saying in the presence of Mr. Callaway and myself and some of these ladies up in Macon that you had, prior to the purchase of lot 383 from John McMullen, written to them proposing to purchase that lot, and you stated something about writing about lot 354. You do not claim title to lot 354? A. No, sir.

Q. What was it you wrote in reference to lot 354? A. I do not remember, Colonel, what I wrote.

234 Q. You did write them something about lot 354? A. It strikes me I wrote a letter that was returned to me.

Q. Now, I will ask you how come you to write these complainants about that lot. Hadn't you heard they owned some of that land or claimed title to it in some way? A. I may have heard they owned some in this country.

Q. And lot 354 particularly. How come you to write to them about selling you lot 354? A. I do not know that I wrote them about lot 354 particularly. I do not know what I did write them

about, nor what lots. If I could find the letter, I would show it in Court. I do not remember myself.

Redirect examination:

Q. About the conversation, Mr. Crawford, that you might have had in the presence of Mr. Erwin and Mr. Callaway and Mrs. Graves in Macon, do you remember what that conversation was, if you had it? A. I do not remember exactly.

Q. Do you remember whether or not, or is your mind clear as to whether or not you stated something about writing a letter? Is it or not clear? What do you remember? A. It is not perfectly clear about what was said about the letter. It was a thing of no importance. It did not have any weight on my mind. I do not remember exactly.

Q. There is some confusion of land titles in this country, is there not? A. It seem to be, right smart.

Q. Different parties claim different lands? A. Yes, I have had some trouble since I have been in the turpentine business with titles.

Cross-examination:

Q. There are a great many lands to which there are several chains of title, are there not, to the same lot, conflicting? A. I have heard so.

Q. There is a great deal of that trouble in this county, is there not, Colquitt County? A. There has been a good deal of talk of it. I have not heard very much right lately.

WILLIAM MCMULLEN.

Direct examination (continued):

(Mr. PEARSALL:) Q. It is alleged in this bill of com-
235 plaint here that about October, 1898, an agreement was entered into between A. T. MacIntyre, Sr., William McMullen, that is yourself, John McMullen and H. T. Crawford, which agreement was kept secret from these complainants, whereby a conveyance of said lot, referring to 383, was to be made from Samuel L. Hayes, administrator as aforesaid, at private sale to John McMullen, son of said William McMullen, who had with his father been looking after said lands for your orators as aforesaid, for the sum of $500, while said lot of land was worth many times that amount, and that said John McMullen would immediately convey said lot to H. T. Crawford for the sum of $1500, which was an amount largely below the value of said lot at the time. A. I do not know any such charge. I do not know anything about any such agreement whatever.

Q. You were not a party to any agreement between any of these others, and you knew nothing of it? A. I knew nothing of it at all.

Q. It is alleged that John McMullen had been looking after these lands in connection with you? A. He never had anything to do with it in his life.

Q. How long has it been since John McMullen lived with you? A. Twelve or thirteen years.

Q. It is further stated that A. T. MacIntyre, Sr., obtained an order from the Superior Court for the sale of this land. Do you know anything about that? A. I do not know a thing about it.

Q. Do you know anything about A. T. MacIntyre, Sr., writing a deed? A. I do not know a thing about it, sir.

Q. It is alleged in here that said William McMullen was at the time and during a large part of the time for which said services were charged, referring to the services in your account against these parties, that you were actively engaged in defrauding your orators out of the land and the turpentine and timber thereon as hereinbefore set forth in this bill, as your orators are informed and believe and so charge. Have you ever directly or indirectly received any compensation or reward? A. Never received a cent from anybody on earth.

Q. Directly or indirectly? A. Directly nor indirectly.

Q. Never been paid anything for your services? A. Never have been paid anything for nothing I have done for her nor nobody else.

Q. There is a deed dated here, Mr. McMullen, on the 9th of November, 1898, from John McMullen to H. T. Crawford, to lot 383, executed in Thomas County? A. No, sir; I was not there. I don't know where John McMullen was.

236 Q. You were not present? A. Was not present. Don't know where he was.

Q. Do you remember the last time you have been in Thomasville? Can you recall the last time you were in the City of Thomasville? A. No, sir; I do not know that I can. It has been quite a while. The last time I have been there, my recollection is, was when I went down and told MacIntyre I would turn it over to him, that I should have nothing more to do with it, that they would not pay me, and I would not have anything more to do with it; that I was going back here and do what I did do, sue, and the reply of the Colonel was, "If you ever get anything, that is the way you will get it, for they won't pay me, let alone you."

Q. That is the last time you were in Thomasville? A. That is the last time I recollect being in Thomasville until I went since this suit has been entered to meet Mrs. Graves. She begged me so hard for me to meet her down there with Phillip Norman to make arrangements with him about some land she sold him. I met her at the Mitchell House one night there.

Q. Did you see Col. MacIntyre there at that time? A. No, sir.

Q. See Mr. H. T. Crawford? A. No, sir.

Q. Did you see John McMullen? A. Yes, he went with me. I offered to go with Mrs. Graves to the Colonel's office. She said no, she did not want to go; that he was mad with her; that she believed he would have killed her if she had not got out of the office as quick as she did. She did not want to go over there at all.

Q. Do you know anything about the sale of this lot 383 at receiver's sale? A. Yes, I know it was advertised.

Q. Advertised for sale? A. Yes, sir.

Q. Put up and bid off by whom? A. By Tom MacIntyre.

Q. Do you remember the announcement that was made at that time. Did you and he make any announcement at the time of that sale, do you remember? A. No, sir; I do not think he did.

Q. Did you? A. I always felt this way about it; they were her attorneys, and anything that transpired I was to make reports to them, but when they were present I considered I had nothing to do with it, without it was something they did not know and I knew, and they did not know, then it was my business to notify them.

Q. The deed that was made from the receiver of Wilby to A. T. MacIntyre, Jr. What became of that deed? From J. Z.
237 Elliott, receiver, R. G. Willy, to A. T. MacIntyre, Jr., to this lot 383? A. I do not know a thing about the deed.

Q. Did you ever see the deed? A. No, sir The deed was made to A. T. MacIntyre, I suppose. I have never seen that deed.

Q. Col. MacIntyre's answer says, speaking of the trust deed, "It was thought best to put the title in his own name."

Mr. HANSELL: That was A. T. MacIntyre, Jr., all along there?

Q. You refer to A. T. MacIntyre, Jr. A. Yes, sir; there is my statement. "Young Tom," I always called him.

Q. Did you and A. T. MacIntyre, Jr., ever *but* [buy] a lot of land together or ever own any land together? A. No, sir. There was a fraction of a lot down here; it is known as the place the Widow Mercer once lived on; that was sold here at one time and I and Tom bought that.

Q. Was that any of the land claimed by these complainants? A. No, sir; none at all.

Q. It is set out here by Col. MacIntyre as follows: "Some time in the latter part of 1898. Mr. Wm. McMiller came to your respondent and said that he and the Junior had bought another lot or other lots of land besides the Graves lot, and that he was equally interested in it, although the Junior furnished the money, and that he could get five hundred dollars for one of the lots, and wanted Mr. Hayes, the administrator upon the estate of A. T. MacIntyre, Jr., to sell it and to divide the money after paying the cost and interest. This, respondent thought was right, and made application to the Court and got leave to sell it."

A. I have no knowledge of it.

Q. You do not know whether John McMullen was the party? A. I do not know anything about it. I do not know what John knows. I do not know anything about it.

Q. Now, he further says: "Subsequently Mr. Wm. McMullen came down here and said that the man would give fifteen hundred dollars for it if he could get a warranty, that he, Wm. McMullen, was not afraid to make a warranty, and that Mr. Hayes could not make one. Would respondent be willing for Mr. Hayes to take five hundred dollars cash, and let him take the balance on time, and he would make the warranty." Do you know anything about that? A.
I do not know a thing about it, sir. I think Colonel just got
238 the names mixed. That is my notion about it. I do not think he wilfully intended to make any wrong statements.

Q. Now he says: "On another occasion Mr. Wm. McMullen came back and said that he was then ready to consummate the trade, and respondent thought the man, Mr. Crawford, here to do so. Night came on and time for respondent to go home. Respondent invited him, Wm. McMullen, to go home with him. He got in the buggy, and as he got in one of the little grandsons got in also. Respondent had not gone but a few steps before the little grandson asked respondent if he was not going to the depot to meet another little grandson, who was to come that evening. Respondent turned and hurried to the depot, and the train stopped when respondent was about one hundred yards distant. Respondent drove up to the depot, jumped out, and ran to hunt his little grandson. When he returned to the buggy, he, Wm. McMullen, was gone." Do you know anything about that? A. I do not know a thing about that.

Q. You are not the man? A. No, sir.

Q. You do not know whether it was John? A. I do not know anything about it, sir.

Q. He further says: "The last time we met in Thomasville on the Autrey injunction, Mr. McMullen met with us also, and stated about as Mrs. Graves had told respondents: that she had done him or his brother a great kindness, and that he would not charge her anything for his services, and said that he came down here several times, had to pay his expenses and lost "heap" of time, and he thought he ought to have some pay. To which respondent replied that he thought so, too, and to make out his bill, and if he approved it, he would recommend it being paid." What was the conversation, if you had any, with Col. McIntyre about that? A. I do not recall it in them words. Every time that I would go to him he would tell me he would write her and see, that he thought she was sure to pay me, until the last time when I went and he said he was satisfied if I ever got anything I would have to sue her.

Q. Was that the time you filed your petition. A. Yes; I come right home and employed you to file my case.

Q. Were you ever in the office of Hansell & Merrill when Mr. Hansell Merrill was examining any land title? A. Not that I recollect of.

Q. On the 10th day of November, 1898, were you in the office of Hansell & Merrill in Thomasville? A. No, sir.

Q. Did you ever consult with Mr. Hansell Merrill about
239 any title papers to any lot of land that you can recall? A. Never did, as I can recollect of.

Q. When was the first time you ever saw Mr. H. T. Crawford? A. Well, sir, the first time I ever saw Mr. Crawford, the only time I recollect meeting him, I had been out to Capt. McDougal's still, and his still was located on the road leading there. I never saw him as I went by his still, but as I come back from Capt. McDougall's he was out on the still yard there. That was the first time and the only time I recollect seeing him until after this suit was filed.

Q. Did you say anything then about the land? A. No, sir.

Q. Was any land trade mentioned at the time? A. Not that I know of.

Q. Have you ever received anything from John McMullen of the proceeds? A. No, sir; never have. Never seen nothing of the proceeds of it.

Q. Joel S. Graves lived down here at what is called Greenfield? A. They all lived there a while. Eli Graves was the first one that came here.

Q. Joel S. Graves. Did he conduct any kind of manufacturing business there? A. Yes, sir; Joel S. Graves had a large sawmill, sawed lumber, manufactured buckets, etc. During the war he kept his family out of service the first part of the war by making buckets.

Q. Joel S. Grave was also a preacher? A. Yes.

Q. He was a man of education? A. Yes, sir.

Q. Considered a kind of literary man, wasn't he, a man given to books, etc.? A. Yes; he had a fine education.

Q. A preacher down there? A. Yes, sir.

Q. Presbyterian preacher? A. Yes; I have heard him preach many a time.

Q. He built a church down there, didn't he—a brick church—and superintended it? A. Presbyterian denomination, my understanding, furnished the money and he furnished the land, and they had the house built. He gave thirteen acres of land to the Presbyterian denomination. He superintended the work and had it carried on.

Q. He was about the wealthiest man in that particular neighborhood at that time, wasn't he? A. Yes; I guess he was.

Q. When did Abram Graves die? A. I could not tell you, sir, exactly when he died. They moved off and got a little out of my section of country, you know, before they died. I think old man Abram died in Thomasville, is my recollection about it.

240 Q. Cyrus Graves died about '63, I think you testified? A. I think so.

Q. After the war Jennie L. Graves, wife of Cyrus Graves, and daughters moved North? A. Yes, sir.

Q. Left here for the North? A. Yes, sir.

Q. Did you know a man by the name of Jas. Read in Colquitt County? A. No, sir.

Q. A man by the name of James Read living in Thomas or Colquitt County? A. No, sir.

Q. Along in 1851-2-3 or '60? A. No, sir; I do not recollect any James Read. It seems to me like I have a faint recollection there used to be a Dr. Read about Thomasville, but I don't recollect his initials, and I will not be positive about that.

Q. You never knew any man by the name of James Read? Did you know a man having a name similar to that? A. I knew a man we always call James Redd.

Q. James Redd? A. Yes, sir.

Q. Where did he live? A. He lived at old Greenfield for a number of years, lived there until the civil war broke out. He volunteered and went off with the 50th Georgia, and I have never seen him since.

Mr. PEARSALL: You will note our objection to the evidence as to

Read or Redd as being irrelevant and immaterial to the issue and foreign to any matter brought out in direct examination, and that he testifies as complainants witness about these matters.

Q. This Dr. Read that you are talking about always continued to live in Thomasville as long as you knew him? A. I never heard of his being anywhere else. I will not be positive about his being in Thomasville. I have heard of Dr. Reid, it seems to me like down about Thomasville.

Q. Did you know anybody by the name of James Reid in Colquitt County? A. No, sir; I never knew anybody of the name of James Read in Colquitt County.

Q. You knew James Redd in Colquitt County? A. Yes, James Redd.

Q. He was a man that worked about Greenfield? A. At carpenter's work.

Q. And his name was James Redd? A. That is what I called it.

Q. Did he go into the war? A. Yes, sir; went off with the 50th Georgia.

241 Q. Was he in the employment for a time of Joel S. Graves? A. Yes, sir; a right smart while.

Q. Well, what became of that James Redd. A. As I told you a while ago I have not seen him since the war after he went off to the Confederate army his wife went up the country.

Q. Where did she go to? A. Up about Oglethorpe, is my understanding.

Q. Oglethorpe, Georgia? A. Yes, sir

Mr. PEARSALL: Note my same objection to all the testimony for the reasons stated.

Q. Mr. McMullen, you say you were looking after these lands that were claimed by Jennie L. Graves and her daughters? A. Yes, sir.

Q. Down here? A. Yes, sir.

Q. And looked to see whether there were squatters on it, etc.? A. Yes, sir; any trespassers on it in any shape, form or manner, or turpentining, or anything of the kind.

Q. Looking after the returning of it for taxes? A. Yes, sir.

Q. You referred to getting plots and grants for those lots? A. Yes, sir.

Q. Claimed by Mrs. Graves and her daughters? A. Yes, sir.

Q. From Spencer Graves? A. Yes, sir.

Q. Before you got those plots and grants from Spencer F. Graves, Col. MacIntyre had for them the original deed from Joel Graves to Cyrus Graves? A. Yes; he had them for years before that.

Q. Deeds, plots and grants? A. He never had it.

Q. Belonging to those lots? A. I got them for her.

Q. You went to see Spencer Graves, son of Joel S. Graves? A. Yes, sir.

Q. You got those plots and grants. What did you do with them? A. I carried them to Col. MacIntyre.

Q. About '94, wasn't it? A. I think it was somewheres about there; I will not be positive.

Q. Look at this? A. I cannot read anything. I come off without my specs, unless some man about my age will lend me a pair.

242 Cross-examination.

Mr. Erwin:

Q. How long have you been a resident of Colquitt County? A. I could not answer it, unless I knew how long Colquitt County has been established. I was in it when Colquitt County was made.

Q. And you have lived in it ever since it was cut off from Thomas? A. Yes, sir.

Q. Lived in Thomas prior to the cutting off of Colquitt? A. I was born in four miles north of Boston the 4th day of March, in '34.

Q. Boston, Thomas County? A. Boston, Thomas County.

Q. You knew Cyrus Graves? A. Yes, sir.

Q. You knew his wife, Jennie L. Graves? A. Yes.

Q. And his daughters, Ida Graves and Minnie C. Graves? A. Yes.

Q. The complainants here? Yes, sir.

Q. Who was the father of Cyrus Graves? A. Abram Graves.

Q. What relation was Abram Graves to Joel S. Graves? A. Brothers.

Q. What relation was Joel S. Graves to Eli Graves? A. They were brothers, so I was informed, always passed as that. Of course, I was not at the birth of them.

Q. They both lived in this county? A. Yes, sir; all three of them lived in this county a while. Joel S. Graves lived here longer than any of the rest of them.

Q. Look at this letter that is dated March 27, 1894, Moultrie, Georgia, addressed to Mrs. J. L. Graves, and signed William McMullen, and state whether you wrote that. I just want you to see that so you could locate about the time of getting those deeds from Spencer Graves, those grants, I mean to say? A. Yes, sir; I wrote that.

Q. This envelope with the letter is postmarked McDonald, Ga., March 28, 1894, mailing postmark, and Cortlandt, N. Y., March 31, 1894, for the receipt in New York. Where is McDonald, Ga.? A. What they call Pavo on the Pidcock.

Q. And is a little postoffice near Moultrie; how far from Moultrie? A. Right smart piece from Moultrie, about 12 or 13 miles to Pavo.

Q. Do you live in that direction? A. I live 7 miles southeast of here.

Q. Is that nearer to McDonald? A. Moultrie is nearer. I went to Pavo to get the plots and grants. I do not recollect where
243 I mailed it, but I suppose it is postmarked, that shows where I mailed it at.

Q. I will ask to have that letter and envelope marked

Exhibit No. 25.

Q. At the time you wrote that letter, Mr. McMullen, Col. McIntyre was conducting a suit for—— A. Against D. A. Autrey.

Q. The firm of McIntyre and McIntyre? A. Yes, sir; A. T. MacIntyre, Sr., and Jr. They were both her attorneys.

Q. That suit was pending for some time? A. Yes, we had met there before for a hearing. Col. MacIntyre told me he was not willing to go into the trial, him and Tom both, without the plots and grants; that he believed Autrey would whip him if he did.

Q. At any rate you got—— A. I got the plots and grants.

Q. And they were in the possession of Spencer Graves? A. Yes.

Q. Son of Joel S. Graves? A. Yes.

Q. Now, Mr. McMullen, they commenced turpentining that Autrey lot, 384, I mean, along in 1893 or 4, wasn't it? A. To be positive when it was I could not say, but somewheres along there is my recollection now. Of course, I never made any memorandum when they started. I never expected to be bothered here over it.

Q. Lot 384 joins lot 353, doesn't it? A. Corners with it.

Q. And Autrey put his still on lot 353, did he not, on the corner? A. Yes, one corner of 353.

Q. He was turpentining lot 384 and south part of lot 353 around the still? A. Yes, sir.

Q. Mr. McMullen, referring to this certified copy of your attachment suit in the County Court of Colquitt County I see an exhibit to it and an account stated? A. Yes, sir.

Q. Minnie C. Graves, Jennie L. Graves and Ida J. Graves in account with William McMullen, 1895, February 14th. Trip to Thomasville to defend lot of land 384 in the 8th District of C. C., Ga., $10. To services for three days searching for plots and grants, $3; making $9.00. On consideration now, if that letter of yours is dated 1894, that search for the plots and grants was not in 1895, was it? A. I will declare I cannot say.

Q. You stated in the letter it was in 1894, and you said so yourself? A. That letter is bound to be correct, my friend.

Q. And that was a mistake in the date? A. Must have been a mistake in the date, I guess.

244 Q. The next item attending trial at Thomasville expense of trip, $10. The next item paid to clerk for copying deed, G. W. Newton, he is clerk? A. He was then. He is not now.

Q. 150? A. He is here, though.

Q. March 15, attending trial second time, $10.00. Trip of James Murphey for witness to prove height of boxes, $2.00. That was in relation to lot 384? A. 384.

Q. Cash paid to notary public, .50. April 10, to third trip to Thomasville for the trial in defending lot 384, $10.00. Then you give a final entry, 1898, February 10, general services rendered for attending to and returning lots of lands numbers 383, 384, 354, 345, 437, and guarding against trespassing for twelve years? A. Yes, sir.

Q. $600. A. Yes, sir.

Q. Now, so that item went up to what date, Feb. 10, 1898? A. I could not tell you from my recollection of the date it went up to.

Q. You have got it charged in the account, February 10, 1898? A. I guess so. The paper shows.

Q. What twelve years was it? A. I do not recollect the very date I did commence services for her.

Q. When did you quit? A. I quit. I saw Col. MacIntyre a few days before I come here to Moultrie and employed these men. I told him I had nothing more to do with it.

Q. You quit representing her just a few days before you took out judgment? A. Before I took out the attachment.

Q. Quit representing them. When you got ready to quit you went to see Col. MacIntyre down in Thomasville? A. Yes, sir.

Q. And told him that you had quit? A. Yes, sir. He was the man I was instructed from the beginning to the end to go to.

Q. This morning, Mr. McMullen, you stated that you did not know about the sale of lot 383 to your son, John, and his transfer of it to Mr. Crawford at the time it was done, you heard about it? A. At the time it was done I did not know a thing about it.

Q. How long after it was done before you heard about it? A. I could not tell you exactly; some few days.

Q. A few days after it was done, that was the 9th November 10th, 1898. A few days after that you heard of it? A. After he returned home I heard of it.

Q. Why was it you did not notify Mrs. Graves and her daughters about that? A. Well, sir, simply because I had worked for
245 them and they would not pay me. I had to quit her. She never took my advice on anything.

Q. But you have just stated a while ago you had not notified anybody you had quit until a few days before you took out the attachment. You had not quit a few days after November, 1898? A. Well, now, I do not know how long the attachment was before it was served after I come here to see Pearsall and Shipp, so far as that is concerned.

Q. The attachment is dated the 6th day of June, 1898? A. I know it was not in June that I come here.

Q. The attachment is dated June, 1898. The deed is dated November, 1898. That is correct.

Mr. McMullen, look at this letter which we now hand you and envelope, the letter being dated Moultrie, August 20, 1895, addressed to Mrs. J. L. Graves, signed Wm. McMullen, envelope being marked Pavo, August 22, 1895, addressed to Mrs. J. L. Graves, 44 Croton Ave., Cortlandt, N. Y. State whether you wrote that letter? A. Yes, sir; I wrote it.

Q. I desire to *that* that letter marked.

Exhibit No. 26.

Q. Was that the envelope? A. Yes; I wrote it. Offering $3 an acre for the land. Envelope marked.

Exhibit No. 26.

Q. On August 20, 1895, you had offered her $3 per acre for these lots 383 and 354, those two lots? A. Yes, sir.

Q. For which two of your sons—— A. It was two youngest ones

with me that I wanted it for.

Q. How many sons have you? A. Seven living, two dead.

Q. How far does your son, John, live from you? A. He lives on the adjoining lot of land.

Q. The adjoining lot of land? A. Yes, sir.

Q. And after he sold that lot 383 in November, 1898, you say you heard of it in a few days afterwards from him? A. Yes, sir; I heard of it. I made the offer. I had looked after the land. I thought she had true titles. If I had not thought so when I was representing her I would not have looked after it.

Q. Look at this envelope, the letter being dated Moultrie, Ga., April 13, 1895, addressed to Mrs. Jennie L. Graves, signed William McMullen, the envelope being postmarked Moultrie, April 13, 1895. Did you write that letter? A. Yes, sir; I wrote that letter.

246 Mr. ERWIN: I ask that this letter be marked for identification.

Exhibit No. 27.

Q. Look at this letter, dated, it looks like, Maazy, February 27, 1897, to Miss Ida Graves, New York, signed your friend Wm. McMullen. State if you wrote that letter? A. It is not my handwriting, but let me look over it.

Q. Look at the signature, you can tell whether it is your handwriting? A. Yes, sir; that is my signature. Capt. McDougal's handwriting.

Mr. ERWIN: I desire to have that letter marked an exhibit for identification.

Exhibit No. 28.

Q. Look at this letter, dated Moultrie, Ga., July 31, 1897, addressed to Mrs. Graves, Cortlandt, New York, signed William McMullen, per McD. Did you send that letter? A. Yes, sir.

Exhibit No. 29.

Q. This letter of July 31, 1897, in which you state that Col. A. T. MacIntyre, Jr., died several weeks ago, his father is now too old to attend to much business, and I would think that your interest in this county would require another attorney? A. Yes, sir. I was honest in it, too.

Q. Was Col. A. T. MacIntyre a pretty feeble man along that time? A. Yes, sir; he has been for several years, in my judgment.

Q. Was he too feeble to attend to it? A. Not able properly to attend to business, in my judgment. That is what I complained about, when I would go to him that he would fail to attend to it.

Mr. ERWIN: I desire to have this letter marked for identification. Marked as above,

Exhibit No. 29.

Q. Look at this letter, dated Moultrie, September 11, 1897, addressed to Miss Minnie C. Graves, 43 Croton Ave., New York,
247 and signed William McMullen, per McD. State whether you signed that letter. The envelope is postmarked September 12, 1897. A. Yes, sir.

Mr. ERWIN: I desire to have the letter marked Exhibit — for identification.

Exhibit No. 30.

Q. What office did Mr. J. G. Trueluck hold in this county in 1894? A. Tax collector.

Mr. PEARSALL: I object to that, as the record of the comptroller general is the highest evidence.

Q. Look at that letter and glance over it? A. I think you will find in the tax digest that it was given in by me.

Q. This letter from Trueluck, of August, 1894, I am speaking about in 1893. Did you give in those taxes for that land in 1893 or 1894? A. I had given it in the year I went in and surrendered that up to Col. MacIntyre.

Q. I am talking about this year that this letter of Mr. Trueluck speaks about, about the tax return not having been made up on the tax digest for 1894, no returns of the property for taxes and the property being double taxed.

Mr. PEARSALL: I object to the reading of that letter.

A. I do not recall about the date.

Q. Then you say you give up making returns for it about 1893? A. My recollection is I gave it in in the spring of the same year that I surrendered up to Col. MacIntyre. I come right back home and had them papers fixed up.

Q. You surrendered the making of returns for taxes to Col. MacIntyre somewhere about 1893, did you? A. I must, if this is correct.

Q. I am asking you for your best recollection as to the time when you stopped making the returns for taxes for this property? A. Now, as to the very date I could not answer that.

Q. I want your best recollection of the time when you stopped making returns and turned that part of it over to Col. MacIntyre?

248 Mr. PEARSALL: Our objection to that is that the tax returns themselves would show whether or not he was returning it for taxation.

Mr. ERWIN: It might or might not.

Mr. PEARSALL: Being written evidence it would be higher than the witness' recollection about the year.

Q. Answer the question? A. It seems to me I certainly gave it in longer than that, though I ain't certain about that, longer than 1893.

Q. Well, do you think you gave it in as late as 1894? A. It seems so, to me, I did; but I will not say positive.

Q. You think you stopped giving it in in 1894, and Col. MacIntyre commenced giving it in after that? A. Somewheres about then it may have been. I considered it his business when I turned it over to him, when I turned it over and told him I was not going to have anything more to do with it. It was not mine.

Q. Now, then, if this statement made August 21, 1894, by Mr. Trueluck, is correct, wherein he says, "I have just received the tax

digest for 1894 and I do not find your name on it at all, nor no one to represent you. I write this to inform you of the danger, etc." The letter addressed to Miss Minnie C. Graves. If that is correct about the 1894 taxes, would it enable you to fix the time as to when you gave it up to Col. MacIntyre, whether it was before or after there was a default in returning the taxes?

Mr. PEARSALL: I object to any statement as to what was stated by J. G. Trueluck. He is not a party to this suit, and the purported letter which they have has not been proven to have been signed by J. G. Trueluck, and any statement made in that is objected to.

Q. My question is. You have not answered it. If that be true, that there was a default in the return of the property for taxes in 1894, if that be the time, as you are uncertain about the time, would that enable you to tell whether or not you had surrendered the returning of the taxes on the property to Col. MacIntyre before there was a default made, or was it afterwards? A. My recollection is it was not.

249 Mr. PEARSALL: I object to the witness stating anything as to the tax returns unless the tax returns are accounted for themselves, the original tax returns filed, unless they are accounted for.

Q. Answer the question? A. The truth is, to say point blank, I do not know. I want to tell the truth about the whole matter.

Q. Let me put the question to you again. Did you make default in returning the property for taxes while you were looking after it? A. I never did.

Q. If there was a default in 1894—— A. I never made any default.

Q. You had made returns prior to 1894? A. Yes, sir.

Q. Then, if there was a default made in 1894 in the return of the taxes, it was after you had stopped returning it for taxes? A. Yes, sir; I know I never made any default while I represented them.

Q. What position did Mr. J. C. May hold in the county in 1898?

Mr. PEARSALL: I object to that question.

A. He was a tax collector.

Q. About January, 1898? A. Somewhere about there, I reckon.

Q. Look at this letter which I now hand you, dated January 31, 1898. Have you read that letter? A. I do not know that I can understand it all. I am a poor scholar.

Q. I ask you, referring now to the statement in this letter purporting to be from Mr. J. C. May, tax collector, to Miss Minnie C. Graves, dated January 31, 1898, referring to the statement in the letter wherein he says that you had ordered the lands, their lands, levied on for the taxes and calling their attention to it. I will ask you whether or not that is true, that you had told him to levy on the lands in January, 1898? A. That is not true.

Q. For taxes? A. It is not true.

Mr. PEARSALL: I object to the question based upon a supposition,

upon a supposed letter, without some proof that it is in fact a letter signed by somebody whose signature is identified.

Q. Is Mr. May tax collector here now? A. No, sir.

250 Q. Where does he live? A. He lives in the southeast side of the county.

Q. Southeast side of the county. Does not live in Moultrie? A. No, sir.

Q. Is Mr. Trucluck the gentleman the letters refer to, is he living in Moultrie? A. No, sir.

Q. Where does he live? A. About 9 or 10 miles west of here.

Q. You testified that your son, John, went with you to see Spencer Graves to get these tax deeds? A. Yes, sir; not the tax deeds.

Q. The plots and grants to these lots? A. Yes, sir.

Q. When you got to the mill you found Spencer Graves at work and your son, John, took his place? A. Spencer went to get the plots and grants.

Q. Was John McMullen living with you at that time? A. No, sir.

Q. Living right near by? A. Yes, sir; near by.

Q. On adjoining lots? A. Yes, sir.

Q. You testified on your direct examination about being present at a sale of lot 383 at Moultrie when the lot was put up at receiver's sale, Elliott, receiver? A. Yes, sir.

Q. That was about '94, wasn't it? A. Somewhere back there; I could not say exactly when. I kept no memorandum of it.

Q. Now, I call your attention to this language in the answer of Col. A. T. MacIntyre referring to sale, in which he says, referring to A. T. MacIntyre, Jr.: "On his return he informed your respondent that one of the lots advertised to be sold as one of the Wilby lots was one of the Graves lots. He and Mr. McMullen consulted about it, and they thought the best way to protect Mrs. Graves' interest would be to let it be put up for sale, and if it went for less than it would cost to file a claim, to bid it in for Mrs. Graves." I will ask you whether or not that statement that Mr. A. T. MacIntyre says his dead son, A. T. MacIntyre, Jr., made to him is true or not? A. I do not recollect nothing about them words.

Q. Do you deny its truth? A. I will tell you precisely——

Q. I am asking you, do you deny that fact, that it was true. I am not trying to get you to testify to something else. Do you deny that fact, that that was true? A. I have no knowledge of hearing any such talk or any such language with Tom MacIntyre.

Q. Will you swear that it was not said. Did you notify

251 them that it was advertised to be sold? A. When I got up here, Tom was here, and he says, "We cannot file a bond, a claim bond." I knew nothing about law. I thought we could file a claim bond to anybody else's claiming it. He says the only thing to do is to let it sell. He says you bid it in. I says I ain't going to pay out any more money for it or about it. He says I will buy it. I will do it, and it was put up and sold, and he bought it. I did not

know how he made the title, nor nothing at all about it. I suppose he had the deed made to himself.

Q. Was he proposing for you to bid it in for the Graves? A. That is what he first proposed.

Q. And then he said he would do it? A. I told him I was not going to spend any more money about it.

Q. Then he said he would bid it in for them? A. He said he would bid it in.

Q. Well, about the statement of Col. MacIntyre that he announced that the property was Graves' property? A. I don't think he did. I think I did.

Q. You think you announced it? A. I think I announced it at the sale, if a man bought it he bought it on his own risk.

Q. That it belonged to the Graves? A. I was representing the Graves women.

Q. Now I call your attention to this statement of Col. MacIntyre in this answer in reference to what A. T., Jr., told him: "He said he gave the deed to Mr. Wm. McMullen, and intructed him not to have it recorded, and when Mrs. Graves came to give her the deed upon her paying the expenses, and let her destroy it." A. That is false. I never saw the deed in my life.

Q. I call your attention to this statement in the answer of Col. A. T. MacIntyre in this case: "Respondent desires to state that the last time we met in Thomasville on the Autry injunction, Mr. McMullen met with us also, and stated about as Mrs. Graves had told respondent that she had done him or his brother a great kindness, and that he would not charge her anything for his services, and said that he came down here several times, had to pay his expenses, and lost 'heap' of time, and he thought he ought to have some pay." I will ask you whether or not that is true or false? A. No, sir; I never said any such thing as that.

Q. You deny you made that statement to Col. MacIntyre? A. I do, sir.

Q. I call your attention to this statement in the answer of Col. A. T. MacIntyre, Sr., now dead: "Some time in the latter
252 part of 1898, Mr. Wm. McMullen came to your respondent, and said that he and the Junior (referring to A. T. MacIntyre, Jr.,) had bought another lot or other lots of land besides the Graves lot, and that he was equally interested in it, although the Junior furnished the money, and that he could get five hundred dollars for one of the lots, and wanted Mr. Hayes, the administrator upon the estate of A. T. MacIntyre, Jr., to sell it and to divide the money after paying the cost and interest. This, respondent thought, was right, and made application to the Court and got leave to sell it." Now, I ask you whether or not that conversation took place between you and Col. A. T. MacIntyre, Sr., at any time, say within a month prior to the time when John bought the lot or at any time? A. No, sir; it never did.

Q. You deny that conversation took place? A. I do, sir.

Q. That statement is false? A. Yes, sir.

Redirect examination.

Mr. PEARSALL:

Q. You said something about Mr. Graves being a preacher, and a man of some education and prominence in building up one little section. Was he prominent in any other respects, as to the payment of his debts, etc? A. No, sir; he commonly made a failure on that point.

Mr. ERWIN: I object to that evidence as irrelevant.

Q. Something was said about James Read. You said you knew no man of that name in this county; you don't know whether there was one or not? A. No, sir; I don't. I don't say there was or was not; if there was I knew nothing of it. There was a man called James Redd.

Q. You represented the Graves from the time of your employment, you say, about twelve years ago, up until the time—— A. I surrendered to Col. MacIntyre.

Q. And that was just prior to the issuing of this attachment? A. Yes, sir.

Q. During that time you discharged your duties about the returning of the land for taxation? A. I did.

Q. If there was any default about it, it was due to—— A. The only default was by her not sending money. I learned afterwards she sent a check to A. T. MacIntyre. He said he used it himself. She told me at Thomasville in the Mitchell Hotel she had sent the collector another check to pay the taxes. There was no de-
253 fault while I represented her on the lands not being returned.

Q. If there was a default it was due to the negligence of the tax collector or some officer? A. If there was any I never heard of it.

Q. You represented her up until the date of this attachment? A. Yes, sir; short while back of that attachment.

Q. Now, in this letter which they show you, in which you offer to buy lots 383 and 354 for your two sons, was either of those boys John McMullen? A. No, sir; nary one of them.

Q. John McMullen prior to this time had married and owned a place of his own? A. Yes, sir.

Q. You were wanting to buy this for your two younger sons? A. Yes, sir; some I had not given any land to. There stands one now, W. S. McMullen.

Q. On April 13, 1895, you wrote to Mrs. Graves as follows: "I have done all for you that lay in my power. I have paid money out of my own pocket to help you protect your land. I also got the plots and grants for you that you never would a got if it had not been for me. Of course, it was not one cent to me, only I would like to know what I have done to cause you to get insulted at, as I have tried to befriend you." That is true as stated in that letter? A. She gave me shilali about her taxes being too high some time prior to that and had been writing to others to know how land was given in here; she thought I give in hers too high.

Q. That was the complaint she was making? A. That was the complaint she was making. I hate to do all I can for anybody and then they go to quarreling about it. I was giving in land under oath, and other land was given in, round timber, for $2 an acre.

Q. Now, on July 31, 1897, you wrote her: "A certain party is now cutting logs adjoining your lot 384 and I fear that they may get on your land to cut any time. In fact, I have been informed by a friend that I might watch it as certain parties intended to attack your property. All I can do is to keep you advised as to what is going on." A. That is when they were on 353, and one of the hands told me they were going to cut 384, and I guess they would have done it, but I went to Pidcock, who had a contract with Dan Autrey and was going to cut it. I notified them promptly, and old man Carmen said if that was the way of it he would not have anything more to do with it.

Q. On February 27th you wrote her this lot 384 was boxed and worked out in turpentine by D. A. Autrey and is now exposed to fire as he is going to work it on another year. Mr. Autrey is a neighbor of yours, is he? A. Yes, sir.

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Q. Claiming this land? A. Yes, sir.

Q. But you in the discharge of your duty notified her of the condition of the land? A. Yes, sir.

Q. That was in 1895? A. Yes, sir. The first Court that met in Thomasville, the Court allowed him to go on as he had boxed it and did it and chip 5 inches high, but not to go over that, but he went right on. That is how come Jim Murphy to be brought in. He went right on chipping it is my recollection. It was about four feet. I called on old man Jim Murphy and he went there and measured it.

Q. In this same letter you wrote her "Your interest certainly requires your presence here in order that you can see for yourself, and the sooner you come the better. This is necessary in order that you may save your holdings." A. Yes, sir.

Q. You wrote her that letter? A. Yes, sir.

Q. Gave her that information? A. Yes, sir.

Q. Now, on September, 1897, you write her: "The lot 384 that was boxed and some timber cut would not now sell for much, but you ought to recover damages. D. A. Autrey was the party who damaged your lot 384." You say that is the same Autrey who is your neighbor. You have nothing against him? A. Not a thing in the world so far as a neighbor. I have found him a straight man.

Q. In this, now, you discharged your duty to her? A. Yes, sir. I was discharging what I felt to be my duty.

Q. Against your neighbor? A. Against him.

Q. And those services and other services you have never received any compensation for? A. Never received anything out of them.

Q. Except possibly some vilification from them.

Q. You are a man of limited education? A. Yes, sir.

Q. Never been to school very much? A. Very little, sir.

Q. Never been in any troubles. This is the first trouble you were ever engaged in? A. The first law suit I was ever engaged in.

Q. You are sixty years old? A. Born the 4th day of May, '34.

Q. John McMullen cannot read, can he? A. No, sir; cannot write his name.

Q. Now the statement about which Mr. Erwin inquired, about the conversation with Col. MacIntyre, you do not say it was not John McMullen, but you deny you had any such conversation? A. I do not deny anybody else had it.

Q. The last time you were in Thomasville was when you surrendered your agency to Col. MacIntyre? A. Yes, sir; until since this suit got up, Mrs. Graves was her——

Q. You met them down there? A. I met them down there myself.

Cross-examination.

Mr. ERWIN:

Q. On your cross examination a while ago by me, Mr. McMullen, about that failure to return taxes in 1894, you stated that it was about that time that you turned over the returning of taxes to MacIntyres? A. Somewhere about there, I think.

Q. They had charge of it, then? A. Yes, sir.

Q. You had returned the taxes prior to that time? A. Yes, sir.

Q. Col. MacIntyre said he never took charge of that business until you quit, and you told him you had quit just about a week before—— A. I went and told him I had quit.

Q. Quit having anything to do with it? A. Yes, sir.

Q. It is when you told him you thought you were free to attach this property because they were non-residents? A. Yes, sir.

Redirect examination.

Mr. PEARSALL:

Q. Any questions about the date of any default, if there was a default, you recollect only from your memory, you are not sure as to those dates? A. I am not sure about the dates. I told you all the time I am not sure about the dates.

Mr. HANSELL:

Q. In your stating about what occurred up here the day the land was sold, between you and Tom, you do not know what Tom told his father? A. No, sir; I do not know what Tom told his father.

256 VOLUME 2. EXAMINER'S REPORT.

J. N. Talley, Examiner.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Filed March 17, 1903.

CECIL MORGAN,
Deputy Clerk.

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258 United States Court Room, Macon, Ga.

FRIDAY, *January* 3, 1902.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Present:
Mr. Marion Erwin and Mr. M. P. Callaway, for the Complainant;
Mr. Matt J. Pearsall, Solicitor for H. T. Crawford, William McMullen and W. W. Ashburn;
Mr. Charles P. Hansell, for Mrs. A. Y. McIntyre, Executrix.

The EXAMINER: Who appears for Hayes, administrator?
Mr. HANSELL: The two run together to such an extent I suppose I could represent him in this hearing.

DELLA COOGLE, called as a witness for the complainants, duly sworn, testified:

By Mr. ERWIN:

Q. Where do you reside? A. Macon, County, Georgia.
Q. Who was your father? A. A. J. Redd raised me as my father.
Q. You mean he was your adopted father? A. Yes, sir; he was my adopted father.
Q. James J. Redd? A. Yes, sir; I always went by the name of Della Redd.
Q. You went by the name of Della Redd before you were married? A. Yes, sir.
Q. Where was Mr. James J. Redd living in May, 1899? A. He was living on Mr. E. J. Brady's place.
Q. In what county? A. Three miles west of Oglethorpe, Macon County, Georgia. If I am not badly mistaken it was three miles, was what it was called.
Q. You saw Mr. M. P. Callaway here this morning? A. Yes, sir.
Q. Did you see him there at that place in May, 1899? A. Yes, sir.

259 Q. He went down there. Did you see him with Mr. James J. Redd? A. Yes, sir. I saw the man. He came to where he was at work. He was at work in the field. Mr. Callaway came to him, introduced himself and told him he wished to talk with him.

Mr. PEARSALL: Never mind.
Mr. ERWIN: Never mind what he told him.

Q. Did he sign up a paper for Mr. Callaway there? A. Yes, sir.
Mr. PEARSALL: Where is Mr. Redd? A. He is dead. Mr. Callaway was out in May and he died the 21st day of June following.

Q. He was an old man, was he? A. Yes, sir; he was in his 76th year when he died.

Q. Did Mr. Redd make any statement to you in reference to whether or not——

Mr. PEARSALL: I prefer you not to lead the witness, Mr. Erwin, along there.

Q. Did he make any statement to you as to whether or not he had owned a certain lot of land that Mr. Callaway had shown him a deed down there to? A. He made the statement to me that he did not own the land that Mr. Callaway had—I could not tell it as he told me then, but the statement he gave me was that he did not own the land and never had owned it, that his name was forged, signed to the paper unbeknowingst to him.

Mr. PEARSALL: The defendant objects to the question and answer as immaterial and irrelevant. There is no issue of forgery. That it is not a statement made by a party at interest. That it does not identify any deed or locate any lot of land.

Mr. ERWIN: I do not insist upon that part of the statement relative to the deed out of James J. Redd being a forgery; I am not insisting on that; I merely insist on that statement of Mr. Redd as to claiming any interest whatever in the lot of land at any time,
260 mentioned or referred to in the deed showed him by Mr. Callaway.

Q. Who was your mother? A. Lizzie Redd.

Q. Your mother was Lizzie Redd. Is she here? A. Yes, sir.

Q. What is her name? A. Mrs. Jones.

Q. She was your mother? A. Yes, sir.

Q. And she was the daughter of whom? A. James J. Redd.

Q. You are really his granddaughter? A. Yes, sir; his granddaughter.

Q. And lived with him? A. Yes, sir; he raised me.

Q. Do you know Mr. James J. Redd's signature? A. Yes, sir.

Q. You have seen him write? A. Yes, sir.

Q. Look at that signature, James J. Redd, to this little paper, written in this little pocket memorandum book; is that his signature? A. Yes, sir; that is his.

Cross-examination.

By Mr. PEARSALL:

Q. How old are you? A. I will be 26 years old on the 29th of this coming May.

Q. Where were you born? A. I was born near Grangerville, in Macon County, Georgia.

Q. How long has your father been dead? A. He died the 21st of June, 1899. I was taught to call him father. He raised me from an infant.

Q. Are you married? A. Yes, sir.

Q. Where is your father? A. He is dead.

Q. When did he die? A. On the 26th day of June, 1899.

Q. Not James J. Redd. Who is your father? A. Hodgfield was my father. I never knew anything of him. James J. Redd was all I ever knew anything of as father.

Q. When did you first know James J. Redd? A. All my life. He raised me from an infant.

Q. Was he related to you? A. He was my grandfather.

Q. On which side? A. Mother's side.

Q. He was your mother's father? A. Yes, sir.

Q. When did Mr. Callaway come to your place? A. If I am not mistaken it was the 26th day of May, 1899; I will not be positive that it was the 26th day, but it was towards the last of May. I think the 26th, if I am not very badly mistaken.

261 Q. How long, then, before Mr. Redd died? A. He died the 21st of June following.

Q. He was then 76 years old? A. Yes, sir.

Q. What was the cause of his death A. He died of heart failure, heart affection.

Q. A man in good mind at the time of his death? A. Yes, sir; all right. His mind was all right up until the moment before he died.

Q. You knew nothing about the lot of land to which Mr. Callaway referred? A. Nothing only what I heard him say.

Q. Do you know where your father lived or where Mr. Redd lived before he moved to Macon County? A. He lived in Colquitt County.

Q. Did you ever live there? A. No, sir.

Q. When did he leave Colquitt County? A. He left there the first year of the war. He went from there to the army.

Q. He could read and write? A. Yes, sir.

Q. A man of any education? A. Yes, sir; he had a very good education.

Q. Did he use glasses towards the latter part of his life? A. Yes, sir.

Q. Eye-glasses? A. Yes, sir.

Q. Where was it Mr. Callaway saw him? A. He was in the field.

Q. Did he have his glasses with him? A. Yes, sir. No sir; you make me speak too fast. He could use glasses or he could do without glasses. He could read or write without his glasses the last four or five years of his life. But up until then he could not do anything at all, without his glasses. The last four or five years his eyesight was very good. He could read handwriting and also write and read print without glasses. He could read by lamplight at night without glasses.

Q. What was he doing in the field at this time? A. He was hoeing cotton.

Q. I believe you stated he had no glasses? A. He had no glasses.

Q. Did not use them? A. He could do without them.

Q. Who else was there? A. There was not any one else right near, but my husband was in the field near enough to see Mr. Callaway when he went to him.

Q. What were you doing? A. I was hoeing.

Q. Right with him? A. Right with him.
Q. Did you see the paper? A. Yes, I saw the paper.
Q. Did you examine it? A. No, sir; I did not examine it.
262 I was not very far. I was near enough to understand him and Mr. Callaway talking.
Q. Were you hoeing the same row or a different row? A. I was hoeing a different row.
Q. Were you ahead of your father or behind him? A. I was a little piece ahead of him, when Mr. Callaway came up.
Q. You did not know Mr. Callaway? A. No, sir; not until he introduced himself.
Q. Did he introduce himself to you? A. No, sir.
Q. You stood by through this conversation? A. Yes, sir.
Q. Or part of it? A. Yes, sir.
Q. Did you see Mr. Redd sign that? A. Yes, sir.
Q. You did? A. Yes, sir.

LIZZIE JONES, called for the complainants, duly sworn, testified:

By Mr. IRWIN:

Q. Mrs. Jones, where do you live? A. In Macon County.
Q. How far do you live from the Brady place where Mrs. Coogle lives or where she lived? A. Two miles.
Q. Who was your father? A. James J. Redd. J. J. Redd is the way he generally signed his name, you know.
Q. When did he die? A. '99, the 20th of June.
Q. Do you know where he lived prior to moving up to this section? From what county? A. We moved from Colquitt to this county and we have never been out of it since.
Q. What relation are you to Lizzie J. Redd? A. Daughter.
Q. Your name was Lizzie Redd, then? A. Yes, sir.
Q. Do you know where the Greenfield church was in Colquitt County, and is? A. Yes, sir; it was just about a mile from where we lived.
Q. To Greenfield, Georgia? A. Yes, sir.
Q. As a girl did you grow up near that place, Greenfield, Ga., in Colquitt County, Georgia? A. Yes, sir.
Q. What was your father doing? A. There when I first remember. Working at a bucket factory, hauling buckets.
Q. Who was running it? A. Uncle Joel Graves. I will say Uncle. I always called him Uncle because he was my school teacher. I said Uncle.
Q. He ran the bucket factory? A. Yes, sir.
Q. Cooperage factory? A. Yes, sir.
Q. And your father, James J. Redd, worked for him some time? A. Yes, sir.
263 He was the same James J. Redd that moved up to Macon County? A. Yes, sir.
Q. And died in June, 1899? A. Yes, sir.
Q. Do you know whether he ever claimed to own lot 383 in the

8th district of Colquitt County, near Moultrie? A. No, sir; I never did. He never owned none.

Q. He never owned any? A. No, sir.

Mr. PEARSALL: We object to that question, on the ground that it is illegal, and that you cannot prove ownership by the disclaimer by any party except one in whom the title is alleged to be and no ground has been laid for the introduction of this testimony. The witness has not qualified as a witness who could make any such statements in the nature of a disclaimer.

Q. Mrs. Jones you are one of James J. Redd's heirs? A. Yes, sir.

Q. You never claimed any interest in lot 383 in the 8th district of Colquitt County? A. No, sir.

Q. You do not claim any now? A. No, sir.

Mr. PEARSALL: I prefer you not to lead your witness.

Q. About when did Mr. James J. Redd move away and move his family away from Colquitt County, Georgia? A. Well my daughter told you it was '61, yet she did not know. It was '62.

Q. Your daughter was not born then? A. No, sir.

Q. What she states must necessarily be from hearsay? A. Yes, sir.

Q. You know it was about '62? A. Yes, sir.

Q. When was the next time that you knew of James J. Redd's going to Colquitt County at all? A. I have forgotten the year we went back, but I reckon it has been about, I will tell you maybe you will know, it was the time they run the railroad from Brooks County to Moultrie. My father went down there and they were just completing the road as he got there, that year.

Q. Were you with him at that time? A. I went as far as Brooks. I did not go to Greenfield, but he did.

Q. You and he went on a visit then? A. Yes, we went to see my sister.

Q. And went back again? A. Yes, sir.

264 Q. Was he ever known as Read? A. No, sir; his name was Redd. He always signed his name that way.

Cross-examination:

Q. Where were you born? A. I was born in Macon County, Oglethorpe.

Q. When? A. I will have to tell you my age. I am 52 but I have forgotten what year, I have forgotten. I am afraid to say.

Q. Who was your mother? A. Martha Matthis.

Q. Did your mother ever live in Colquitt County? A. Yes, sir.

Q. With whom? A. Mr. J. J. Redd. I mean *by* mother was born here in Oglethorpe

Q. Did she live with Joel S. Graves? A. Yes, sir.

Q. Was Joel S. Graves related to you or your mother or Redd? A. No, sir.

Q. Where was your father born? A. In Jefferson County.

Q. This State? A. Yes, sir.

Q. When did he go to Colquitt County or Thomas? A. I cannot tell you in what year, but it was the time that railroad that runs from Brooks to Moultrie—

Q. I mean before that? A. I cannot tell you. I was too small then.

Q. Do you remember Joel S. Graves? A. Yes, sir.

Q. How old were you when he died? A. My father?

Q. You? A. I did not know he was dead until here about two or three months ago, but I was twelve years old when I left from down there. I recollect him and his family well. There was two families of Graves. I think one was Eli Graves. I recollect them all.

Q. Though you were twelve years old when you left? A. Yes, sir.

Q. And you never went back there until about five years ago? A. Yes, sir; whenever it was, I do not know. I don't recollect what year it was.

Q. From the time you left in 1862? A. Yes, sir. From the time I left in 1862 I did not go back until they put the railroad from Brooks County to Moultrie.

Q. You did not know Joel Graves was dead until two or three years ago? A. No, sir.

Q. Do you know whether Eli Graves is dead or not? A. Yes, sir.

265 Q. When did you hear of his death? A. I think this here gentleman that went to our house was the one that told us he was dead.

Q. Mr. Callaway? A. Yes, sir.

Q. He told you that he was dead? A. I think he did; yes, sir.

Q. Did he tell you about Joel Graves being dead? A. Yes, sir. I had heard it before. My father had heard of it. He come home and told us all of it.

Q. Can you read and write? A. Yes, sir; if I had my eye glasses I reckon I could, I can a little.

Q. You do not know as a matter of fact whether Mr. Redd owned any lands in Thomas or Colquitt County, do you? A. No, sir; I am satisfied pa never owned no land with the exception of a little piece here below Oglethorpe and he did not own it but three days. He bought it and was dissatisfied and turned right around and sold it. Never did move on it. He bought it for a son-in-law, John Parton. He did not like the land. John Parton would not go on it. He sold it.

Q. Your father worked for Joel S. Graves? A. Yes, sir.

Q. Do you know the financial condition of Joel S. Graves at the time your father was working with him? A. You mean in the way of his making of a living?

Q. Yes? A. He ran a bucket factory, saw mill and grist mill.

Q. And a church? A. And the church, and he run a store.

Q. He run a saw mill, grist mill? A. Bucket factory.

Q. Bucket shop and a church? A. Yes, sir.

Q. And a store? A. Yes, sir; at the time I knew him.

Q. What did Eli Graves do? A. I do not know, sir; I am not very well acquainted with him.

Q. Joel S. Graves in addition to these other enterprises dealt in lands extensively, didn't he? A. I do not know, sir.

Q. Do you know about his owning 40 or 50 lots of land in Thomas County, did you ever hear of that. A. I might have heard of it but I have forgotten it I reckon.

Q. You don't know whether he owned any lands in Colquitt County or not? A. You mean Mr. Eli Graves or Mr. Joel S. Graves?

Q. Either one of them? A. I do not know. I think they did to my recollection but then I will not say about that because I don't know.

Q. Did you ever hear of Joel Graves owning any land in
266 Thomas County? A. Not to my age, I don't know about that.

Q. You don't know whether Eli Graves owned any lands there? A. I think he did.

Q. You may have heard of that, but you never heard that Joel S. Graves owned any land? A. I will not say that. I might have heard that. I have never placed my mind on no such as that, and I can't say.

JAMES J. JONES, called as a witness for the complainant' duly sworn, testified:

By Mr. ERWIN:

Q. Mr. Jones, where do you reside? A. I reside in Macon County, sir.

Q. Georgia? A. Yes, sir.

Q. Are you the husband of Lizzie Jones who has just testified? A. Yes, sir.

Q. Did you know James J. Redd? A. Yes, sir.

Q. Her father? A. Yes, sir.

Q. How long ago did you know him? A. I had known him about 8 years, sir, personally.

Q. Have you seen him write? A. Yes, sir.

Q. Look at this signature at the bottom of this writing in this little memorandum book here. Under that memorandum May 20, 1899, signature James J. Redd, do you know whose handwriting that is? A. Yes, sir.

Q. Whose handwriting it that? A. That is his hand write. I have seen him sign his pension warrants enough to know. He lived with me one year.

Q. Look at this paper purporting to be a deed from James J. Read to Joseph A. Shumake, marked Exh-bit No. 7.

Mr. PEARSALL: I object to your stating the contents of the deed as to whom it is from. I understood you to make the statement that it was from Read. By looking at the back of the paper, and not at the signature signed at the bottom.

Mr. ERWIN: I merely identified the paper.

Q. Look at that signature to that deed, and state whether or not it is in the handwriting of James J. Redd that you know this signature here? A. No, sir; that is not his handwriting.

267 Mr. PEARSALL: We object to the question and answer as being irrelevant and immaterial, no issue of forgery having been filed.

Cross-examination:

Q. Will you examine the book handed you by Mr. Erwin in which you state James J. Redd signed it and give the date at which he signed it? Will you answer the question? A. I say Mr. Redd did not sign that. (Pointing to signature of W. E. Johnson.)

Mr. PEARSALL: I ask the examiner to identify this spot which he says in this position, the memorandum book turned bottom side upward, the correct name of which is William E. Johnson. He identifies that.

Q. Pick out the signature which you say was made by J. J. Redd? A. I have not got education to see it.

Q. Can you read? A. No, sir; I cannot read, but when I see handwriting I know it when I see it.

Q. Here is Exhibit 7 which was handed you by Mr. Erwin, will you read that? A. No, sir; I cannot read it.

Q. Is that a signature to a paper? Do you know what that is? A. It is not Mr. Redd's writing.

Q. Can you read? A. No, sir; but I have seen his handwriting time and again. I lived with him one year. I have seen him sign his pension roll.

Q. Can you sign your name? A. Yes, sir.

Q. Can you read your name when you see it signed? A. Yes, sir.

Q. Will you read that (writing "J. J. Redd" on a piece of paper)? A. Put another J there and it would be J. J. Jones.

Mr. PEARSALL: I asked you to identify this paper. I wrote the name J. J. Redd, and he says if there had been another J to it it would have been J. J. Jones. Paper marked Exhibit No. . .

Q. Were you present with Mrs. Jones when Mr. Callaway came to your house?

Mr. PEARSALL: Note, Mr. Examiner, that question was
268 answered by Mrs. Jones and we object. I think Mr. Erwin it would be well enough in view of the fact that his wife is sitting behind him and has three times prompted him in answering questions that she be asked to retire from the court room until the examination is completed.

Mr. ERWIN: I think it is proper Mr. Pearsall that the record show that your question purported to make a misstatement of fact as to the visit of Mr. Callaway to Jones' house, when there has been no testimony on that subject at all, and the witness, Mrs. Jones was merely correcting a statement that Mr. Callaway visited the house when she testified she was two miles away from there and was not there at all.

Mr. PEARSALL: I was not questioning Mrs. Jones.

Q. You put the question to this witness, when Mr. Callaway visited Mrs. Jones' house?

Mr. PEARSALL: I asked the witness that and not Mrs. Jones.

MERREL P. CALLAWAY, called for the complainants, duly sworn, testified:

By Mr. ERWIN:

Q. You are of counsel for the complainants in this case. A. Yes.

Q. After the preliminary hearing for injunction in this case when the paper purporting to be a deed from Joel S. Graves to Jas. Redd or James Read, whichever it may be, this deed which I now hold in my hand marked Exhibit No. 6 and the other paper purporting to be a deed from James J. Redd or Read to Joseph A. Shumake for lot 383 in the 8th district of Colquitt County had been used in evidence, did you make any efforts to find any person corresponding to that name James J. Read or James J. Redd? A. I withdrew the deeds from the clerk's office under an order of the Court and went to Colquitt County to locate this man Redd, James J. Read or James J. Redd and made diligent inquiry there. Found no one by the name of James J. Read.

Q. You got certain information down there? A. That
269 there was a man by the name of James J. Redd who lived near Oglethorpe, Georgia, in Macon County. I went up to Oglethorpe to find this man and located a man by that name James J. Redd, five miles out in the country from Oglethorpe.

Q. State what you did? A. I went out to see him. Found him in a field. Found Mr. Redd in a field in company with a lady and her child. He stated to me that he was James J. Redd who had formerly lived in Colquitt County and Thomas County, the man that had worked with Mr. Joel S. Graves. He made a statement of what was said. I wrote it there in the field and he signed it. I exhibited to him these two deeds, one purporting to be from Joel S. Graves to James J. Read or Redd and the other from James J. Redd or Read to Joseph A. Shumake.

Q. Now what statement did he make to you as to his ownership at any time of this lot of land described in this alleged deed from Joel S. Graves to James J. Read or Redd, for lot 383 in the 8th district. He said he had never owned it nor had any deed been delivered to him for it.

Mr. PEARSALL: The defendants object to the question and answer as being illegal, irrelevant and improper, that no issue of forgery has been filed, and on the further ground that the statement is made by a party since dead and was not made under oath.

Q. Did you put this statement in writing and read it over to him? A. Yes, sir; I read it over to him very carefully.

Q. He signed it? A. Yes, sir.

Q. Look at this writing in this memorandum book at the head of which is a date May 20, or May 26? A. May 20 (26).

Q. 1899 and purporting to be signed James J. Redd, witnessed by M. P. Callaway. A. That is the statement I wrote out and Mr. Redd signed.

Mr. ERWIN: I ask the stenographer to copy that statement into the record. I tender it in evidence and ask to have the book marked, Exhibit No. 32. Statement is as follows:

"MACON COUNTY, GA., *May* 26, 1899.

My name is James J. Redd. I formerly lived in Colquitt Co., Ga., formerly Thomas County, lived there from 1849 to 1862 when I went to the war. Knew and worked for Joel S. Graves. Joel
270 Graves never made me a deed to lot of 383 in 8th district of Colquitt Co., Ga. The deed shown me by M. P. Callaway purporting to be from Joel S. Graves to James J. Read dated 2nd day of Nov., 1852, conveying lot 383 was never delivered to me, nor do I believe he signed the deed shown to me. I never made a deed to lot No. 383 to Jos. A. Shewmake nor to any one else for said lot. I have examined the deed shown me by M. P. Callaway purporting to be from James J. Read to Joseph A. Shewmake of Burke County, Ga., dated 6th Aug., 1863, and I never signed said deed, never knew a man by name of Jos. A. Shewmake. Never knew N. C. Monroe, whose name is as witness on said deed. Was in Macon, Ga., in Aug., 1863, but executed no deed while there. I was well acquainted in Colquitt and Thomas Counties and never knew or heard of a man by the name of James J. Read and believe this name on these two deeds were intended to be my own. I never saw either deed until this time.

JAMES J. REDD.

Witness:
M. P. CALLAWAY.

Macon, Ga., 26, 1899."

Mr. PEARSALL: The defendant objects to the introduction of this what purports to be a statement in the record in this case as it is immaterial, irrelevant, not made under oath, is made by a person not a party to any cause, and the evidence has disclosed the party is since dead.

Mr. ERWIN: We insist it is relevant and admissible on the following grounds:

The complainants on the preliminary hearing and on this hearing have introduced evidence and will introduce evidence fixing positively the fact that the alleged deed from James J. Read or Redd to Shumake under which H. T. Crawford claims lot 383 is a forgery. Also another deed in the same chain of title to which the name W. T. Thompson appears as a subscribing witness, who swears his signature is a forgery, so that the defendant is insisting that complainants must recover upon the strength of their own title even though the defense have broken down in showing title to themselves. They insist that they have shown title by this alleged deed from Joel S. Graves to James Redd, and where the evidence leaves the title in

James J. Redd, if that deed be genuine, a disclaimer on the
271 part of Mr. Redd and of his heirs to any title in the lot and the deed itself from Joel S. Graves to James Redd coming from the possession of a line of predecessors in title which are shown to be forgeries and being not proved otherwise than by mere presentation as an ancient deed, the disclaimer of the grantee in the deed of any interest in the land is pertinent, admissible, relevant, and competent testimony.

Mr. PEARSALL: The defendant desires to enter a protest here to counsel making an argument in the case to burden the record. They object further to the statement of counsel in the presence of witnesses who are to be sworn and who have been sworn, and the further statement that he makes an averment that certain deeds have been proven forgeries. We think that is a matter that has no place in the record in this case and in this proceeding, and we further object to the evidence that has been introduced until these deeds have been tendered in evidence by the defense and Exhibit No. 7 which has been identified shows that James J. Redd had no title nor his heirs at this time have any title in 383 because the paper in itself shows that that title passed out of him by a proper warranty deed dated in 1863 and therefore any evidence as to any statement made by James J. Redd or any heirs of James J. Redd is improper, irrelevant and immaterial.

I want to make another objection that the complainants must recover upon the strength of their own title and not upon the weakness of defendant's title.

Cross-examination.

By Mr. PEARSALL:

Q. That statement which has been identified as having been made by Mr. Redd was not verified by any affidavit? A. No, sir.

Q. Did you at that time regard that statement as of any importance to the rights of your client in this case? A. I did, sir.

Q. There was an officer in the county in which that statement was made, was there not? A. Notaries, I do not doubt it.

Q. It was not reduced to the shape of an affidavit? A. No, sir.

Q. No effort made to give the defendants in this case an opportunity to examining Mr. Redd was there? A. Has not been. It was our intention to do it then.

272 Q. Nothing was done about it towards giving the defendants notice so far as you know, this is the first time the defendants have ever had any notice of any such statement? A. We did not know he was dead until two or three days ago when I went down to bring him up.

Q. You have had a hearing on this case in Colquitt County, after the statement was made? A. Before we knew he was dead.

Q. You did not know he was dead until the last two or three days? A. Went to bring him up to this hearing.

Q. No effort on the part of the complainants has been made to reduce this statement to an affidavit nor to take his testimony *de bene esse*. No such effort has been made? A. No.

Q. You knew he was quite an old man? A. He was quite an old man but he was working pretty lively in the corn field when I saw him. I hoped he would be here a good many years.

CHARLES M. WILEY, called for the complainants, duly sworn, testified.

Examined by Mr. ERWIN:

Q. What position do you hold Judge Wiley? A. I am Ordinary of Bibb County.

Q. Are you as Ordinary custodian of wills? A. Yes, sir.

Q. Are you also the custodian of the records of the old Inferior Courts of this county, Bibb County, Georgia? A. Yes, sir.

Q. Did you know Nathan C. Monroe of Bibb County, Ga? A. Yes, sir.

Q. Did you know of the fact that he had made a will? A. Yes, sir; I know his will is proven by the Court of Ordinary. It is on record as such.

Q. Have you got that will? A. Yes, sir.

Q. Is this the paper which you now hand me that will? A. That is the will of Nathan C. Munroe of Bibb County.

Q. Purporting to be signed in 1867? A. Yes, sir; according to the affidavits of the witnesses and all?

Q. Do you know of the fact that Mr. Nathan C. Munroe made a gift of a lot of books to the Public Library in Macon? A. Yes, sir; I think his will so states. I have not read the will in some time. I think it is generally known.

Q. You have had a great deal of experience in examining signature to papers and documents, have you not? A. Yes; it
273 frequently becomes my duty. I do not know that I could be considered an expert at the business, but I frequently do it.

Q. You have had much experience you say? A. Yes, sir.

Mr. PEARSALL: Do you propose to introduce this witness as an expert?

Mr. ERWIN: Partially, yes.

Q. How long have you been Ordinary, Judge? A. This is my thirteenth year.

Q. Do you have questions before you calling for your examination of signatures in the matter of the probating of wills and in passing on accounts which require examination of receipts and vouchers and signatures of people and things of that sort? A. Yes, sir.

Q. All those matters come under your general line of work do they not. A. Yes. Sometimes accounts are disputed, where administrators make returns, where goods or property have been sold, and I have to go into the qu stion of signatures and things like that.

By Mr. PEARSALL:

Q. Do you qualify as an expert, Judge? A. No, sir; I do not know that I am an expert, only an Ordinary.

Q. Did you ever have a question to come up before you as to the forgery of any name to any paper in which you had to decide

whether it was a genuine signature or not? A. I think there has been. I think some once or twice in some nuncupative wills I have had some discussion on that question.

Q. In a nuncupative will? A. Yes, sir.

Q. Have you ever testified as an expert on forgeries in handwriting? A. No, sir.

Q. Do you know what is necessary for a man to have knowledge of in deciding as to what is a genuine signature? A. Only so far as satisfaction to myself, that is all.

By Mr. ERWIN:

Q. Look at this book which is entitled on the back Land Book and on the interior a copy of the original list of drawings in old Irwin County, together with a list of reverted lots, etc. Look at that book and particularly the signature in writing on the interior
274 of the back of that book, the name N. C. Munroe, in writing, compare that signature with the signature of N. C. Monroe to the will, what do you say about those two signatures?

Mr. PEARSALL: We object to that question until the witness first qualifies as an expert.

A. I consider that they are both signed by the same man, N. C. Munroe. This is a little heavier writing, but I think it is the same writing. That is my opinion about it.

Q. Look at the name N. C. Munroe written on the interior of the book on the last cover of the back, like it was on the interior of the first side of the cover, what do you say about that, as compared with the signature of N. C. Munroe to the will? A. I think it is the same signature.

Q. Now look at this paper purporting to be a deed from James J. Read or James J. Redd to Joseph A. Shumake for lot 383 in the 8th district of Colquitt County, and purporting to be executed before N. C. Monroe, Not. Pub., and purporting to have been executed in Bibb County, from the head of the deed, look at that signature and compare it with the signature to the will and state whether in your opinion they are in the same handwriting or written by the same man.

Mr. PEARSALL: We object to the question and answer until the witness first qualifies that the exhibits, the book and the will is in fact the genuine signature of N. C. Munroe.

A. In my opinion it is written by a different party. I do not think it is the same signature. That (the will) I believe to be the signature of N. C. Munroe because it is a will filed in office and proven and probated according to law.

Q. Well, now compare the signature of N. C. Monroe as signed on that alleged deed, compare that with these two signatures in this land book you have just compared with the will and state whether or not in your opinion the signature of Monroe to the deed is in the same handwriting as the signature N. C. Munroe in the book? A. I should say they were not.

Q. Judge, Mr. C. P. Roberts is your clerk, as Ordinary? A. Yes, sir.

Q. In Bibb County, Georgia, isn't he? A. Yes, sir.

275 Q. You knew of the fact that he made an investigation as to the records of the interior courts in your custody there to see whether N. C. Munroe was notary public at certain times, but you did not make that investigation yourself? A. I do not think I did. I do not recollect that I did.

Q. Can you send Mr. Roberts here? A. Yes, sir.

Cross-examination.

Mr. PEARSALL:

Q. This book which has been exhibited to you, purporting to contain the signature of N. C. Munroe, will you state whether that is his genuine signature or not? A. I could not say. It looks like it. I suppose it is.

Q. You don't know that? A. Compared with this I would say it was. I did not see him sign it.

Q. Can you qualify that you know the genuine signature of N. C. Munroe? A. No, sir.

Q. You do not know N. C. Munroe's genuine signature? A. No, sir; only judging from the will, that is all I go by.

Mr. PEARSALL: We object to all the testimony of this witness until he first shows that he is competent to qualify as an expert and especially as an expert on the genuine signature of N. C. Munroe.

Q. How many N. C. Munroes was there, Judge? A. There were two I think. I think he had a son named N. C. Munroe.

Q. Will you examine this deed taken from the file of the examiner marked Exhibit 6. See that signature. Whose name is signed to it? A. Joel S. Graves.

Q. Will you examine this signature to a deed taken from the files of the examiner marked Exhibit No. 3, and state whose signature appears to that? A. Joel S. Graves, on there.

Q. How do those signatures compare? A. I should say J was altogether different, S altogether different, G is different. That is all I have to say about it.

Redirect examination:

Q. You spoke of N. C. Munroe the man that made the will having a son by the name of Nathan C. Munroe? A. Yes, sir.

Q. In 1862, was he a man? A. No, sir; my recollection 276 of him, I think he must have been, my recollection is that he was in the army, he must have been 19 or 20 years of age. I do not recollect positively about that.

Q. He was not grown? A. I don't think he was. I think he must have been 19 or 20. I was not more than 19 when the war broke out, and I don't think he was so old.

Q. He was not as old as you are and you were 19 when the war broke out. A. Yes, sir.

Q. On this will here there is a consent entered by legatees to that

will purporting to be signed May 6, 1868, by N. C. Munroe. Was that the signature of that Munroe, the son to whom you refer? A. Yes, sir; he gives his consent to some division of property.

Q. The order shows? A. I suppose he was the same party. He was the only N. C. Munroe interested in the estate.

Q. I will ask you to look at his signature entered on that consent in your office, N. C. Munroe, the order sets out he was a legatee there. Compare that with the signature on that alleged deed as a witness to that alleged deed, N. C. Monroe. I will ask you whether they are anything alike or in the same handwriting? A. No, sir.

W. A. HUFF, called for the complainants, duly sworn, testified:

Mr. ERWIN:

Q. What business connection have you with the Macon Public Library in Bibb County, Georgia? A. I am acting librarian and manager of it.

Q. You have been for several years? A. Two years.

Q. You have as a part of that library sets of books, have you not, known as the Munroe Library? A. Yes, sir.

Q. Donated to the library by Nathan C. Munroe, the elder? A. Donated to the city and then the city turned it over to the library. I think that is about the history of it.

Q. Look at this little book marked "Land Book" and state whether that comes from the Munroe library? A. Yes, sir. That book was taken from the library this morning.

Q. By you? A. Yes, sir.

Q. Now, Colonel, I will ask you whether or not you are familiar with the signature of Nathan C. Munroe, the gentleman who made the donation to the library and made the will referred to by the Ordinary. A. I had several transactions with Mr. Munroe
277 when I was a young man while he was in the banking business and in that way became familiar with his signature.

Q. What do you say in regard to this signature to this will Col. Wiley produced, N. C. Munroe, as to whether it is his genuine signature or not? A. I think it was.

Q. That is your opinion? A. That is my opinion.

Q. Look at this signature in the Land Book on the two covers of the book, the interior cover N. C. Munroe, and N. C. Munroe again. What do you say as to their being? A. I think they are the same.

Q. The genuine signature of Nathan C. Munroe? A. Yes, sir.

Mr. PEARSALL: Do I understand he has qualified as an expert?

Mr. ERWIN: He qualified as a man familiar with the signature of N. C. Munroe from seeing him write in business transactions—he was a banker and he had business with him.

Mr. PEARSALL: We object to all the testimony going into that matter until an affidavit of forgery is filed or until the deed is introduced in evidence by the defendant, as being irrelevant and immaterial.

Q. Look at this paper purporting to be a deed from James J. Read or James J. Redd to Joseph Shumake to lot 383 in the 8th district

of Colquitt County, Georgia, and purporting to have been executed in Bibb County, Georgia, 6th day of August, 1863, and purporting to be executed before N. C. Monroe, Not. Pub., and compare that signature with the signature in this Land Book, N. C. Munroe, which you have just identified, state whether in your opinion the signature N. C. Monroe to that deed was in the same handwriting as that in the book?

Mr. PEARSALL: We object to that question and answer until the witness first qualifies as an expert.

A. I would not think those were the same.

Q. Would you say the signature N. C. Monroe to that deed was the genuine signature of Nathan C. Munroe whom you knew? A. I should think not.

278 Q. That is your opinion, it is not his signature? A. Yes, sir.

Mr. PEARSALL: We have the same objection to that question and answer.

Q. Did you know the younger Monroe, the son? A. Yes, sir; I knew him from childhood.

Q. In 1863 was he a grown man of age? A. I cannot recollect about that. I think he must have been nearly of age then. That is my recollection. I am not sure about that, however.

Cross-examination.

Mr. PEARSALL:

Q. How long has Mr. Munroe been dead? A. I do not remember, sir.

Q. About how long? A. I do not remember, sir.

Q. As much as ten years? A. O longer than that.

Q. Fifteen? A. Yes.

Q. Twenty? A. Yes.

Q. Twenty-five? A. I should think so. I am not certain about that however.

Q. You have never seen that signature? You judge that that which you see is his signature, you gather that from memory for you have not seen him write anything in twenty-five years? A. No, I do not think I have seen him write anything since he quit the banking business.

Q. How long has that been? A. Sometime late in the '60s.

Q. You have not been familiar with his writing since the '60s? A. Not since he was in the banking business.

Q. You do not qualify as an expert on handwriting? A. No, sir; I do not.

Mr. PEARSALL: Do I understand the will and books which this witness has compared this signature with are not to be left with the examiner.

Mr. ERWIN: The wills cannot be taken out of Col. Wiley's custody. It is tendered to you for examination right now. You have examined him on it, and the witnesses are tendered to you. The

book the Land Book will be offered in evidence. I offer this land book for two purposes, one is that it shows the original drawing of these lots in question by Eli Graves, that is to say direct from the State of those original lots in controversy.

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Mr. PEARSALL: We admit that.

Mr. ERWIN: You do not represent everybody in this case. I offer it for all purposes. It shows the original drawings of lots of lands in controversy in Irwin County, Georgia, from the State. It also shows that it was a book in custody of Mr. N. C. Munroe, who it is claimed acted as notary public in the conveyance of that land, and his genuine signatures are in it.

Mr. PEARSALL: Do I understand you present that book as evidence to show title out of the State.

Mr. ERWIN: We present it as a part of the history of the drawing of that land and of the original grant of those lands by the State, and also for the purpose of the signatures in the book.

Mr. PEARSALL: We will admit Eli Graves drew this lot of land, but we object to that book until you prove what kind of book it is, by whose authority it was made, whether it is a correct history of the land grants in the State of Georgia. It is simply a printed book not verified by any affidavit and any statement in it cannot bind these defendants.

Mr. ERWIN: You all claim under the same title. I have the right to offer my grants from the State under which you claim, and as part of the history of the same transaction, the published account of the drawing of those lands. I do not think there is a single fact in the book that you would probably dispute. I do not know whether there is anything in there that is in dispute, but it is part of the history of the transaction. We are entitled to put it in, and when making out our case we are not obliged to rely on your admissions. I think that book was admitted on the preliminary hearing.

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Mr. PEARSALL: I do not understand what was introduced on the preliminary hearing necessarily is to be introduced at this time.

Mr. PEARSALL: I withdraw my objections to this book and especially introduce on page 141 which purports to give the names of all who owned land in 1857 taken from the tax digest, among them they give the name of Joel S. Graves, but they do not include lot 383.

CHARLES P. ROBERTS, called for the complainants, duly sworn, testified:

Mr. ERWIN:

Q. Mr. Roberts, what position do you hold with the Ordinary of Bibb County, Georgia? A. I am clerk in his office.

Q. Did you hold that position in May, '99? A. Yes, sir.

Q. Held it ever since? A. Held it ever since.

Q. How long have you lived in Bibb County, Georgia? A. All my life.

Q. Mr. Roberts, the Ordinary is custodian of the records of the

old Inferior Court, is he not of the county? A. Yes, sir; from the earliest records of the county.

Q. The Court that had the appointment during the early times, 1859, 1860, along there of the appointment of notaries public? A. Yes, sir.

Q. Between the dates April 1, 1859, and September 1, 1863.

Q. Did you make any examination of the records of which the Ordinary is custodian there between the dates April 1, 1859, and September 1, 1863, to see whether or not there was any record of any appointment of N. C. Munroe or N. C. Monroe as notary public of Bibb County, Georgia? A. I did so and found there was no entry there of his having been a notary during that time. During that four years and some months.

Q. Did you find that N. C. Munroe was appointed some time after that notary public? A. I found in 1864, in May I think.

Mr. Pearsall: We object to his going into the contents of public records. If there is a matter appearing upon the records of the Court of any Court, a certified copy is the proper way to bring that
281 into this Court, not by a witness. He may testify what does not appear but he cannot testify as to what does appear upon the records.

Q. State to what time it does not appear that he was appointed notary public? A. It appears that he was not notary public from the first of April, 1859, to September 1st, 1863, and that on April 4, 1864.

Mr. Pearsall: We object to what does appear unless you have a certified copy.

Q. Up to April 4, 1864, he was not? A. From April 1, 1859, to April 1, 1863, he was not, and to April 4, 1864, he was not.

Cross-examination:

Mr. Pearsall: We object to that testimony as being irrelevant and immaterial.

Q. What records did you examine to get the information from which you state that he was not notary public. A. It was the records of the minutes of the Inferior Court Bibb County, Georgia.

Q. Who appoints notaries public? A. That Court at that time. There was several on the books, appointments at that time, on those books that I referred to.

Q. Do you testify as a matter of law that the appointments of notary public in Bibb County were correctly recorded there.

Mr. Erwin: I object to that question, the witness testifies not as a matter of law but as matter of fact.

Mr. Pearsall: You put him up here to prove N. C. Munroe was not a notary public. You introduce him for that purpose.

Mr. Erwin: He can testify it does not appear on that record. It is matter of law that that Court had the appointment.

Mr. PEARSALL: You could examine this book here and probably not find it here.

282 Q. You examined nothing but the records of the Inferior Court? A. That was all I was requested to examine.

Q. You did not examine the records in the clerk's office? A. I know positively there was no record in there because they were not appointed through that office at the time.

Q. You state as matter of fact that the proper way for appointing a notary public was through the justices of the Inferior Court? A. To the best of my knowledge and belief.

Q. You do not know whether that is a matter of law? A. It is according to the records of the Court, the number being appointed by that Court during that time.

Q. You have never examined the act which provided for the appointment of notaries public? A. Not particularly.

Q. Do you know who appoints notaries public? A. The judge of the Superior Court does now, sir.

Q. Do you know as matter of law who appointed them at the time you testified? A. Not as matter of law, but by the records, which I presume was law.

Q. After examining certain records you find that N. C. Munroe's name does not appear as notary public. That is the extent of your information? A. Yes, sir.

JENNIE L. GRAVES.

Q. Mrs. Graves, who was your husband? A. Cyrus S. Graves.

Q. Who was he the son of? A. Abram Graves.

Q. Where did you marry him? A. In New York.

Q. State of New York? A. State of New York.

Q. Did you afterwards come to Georgia to live? A. I did.

Q. About what time? A. 1859.

Q. 1859? A. Yes, sir.

Q. What county did you live in then, when you came to Georgia? A. We spent part of the time in Savannah, and some time at Greenfield, Colquitt County.

Q. It is called Greenfield, Georgia? A. Yes.

Q. Did you know Joel S. Graves? A. I did.

Q. Did you know Eli Graves? A. I did.

Q. Did you [have] any children by Cyrus S. Graves? A. Two daughters.

Q. Two daughters who are here? A. Ida J. and Minnie C. Graves.

Q. Two of the complainants in this case? A. Yes, sir.

283 Q. When did your husband die? A. 1863.

Q. Where did he die? A. At Calhoun, Georgia.

Q. What was he doing then? A. He was in the Confederate service.

Q. After your husband's death and some time afterwards, after the war, did you remain down in that section of the State or move

elsewhere? A. I went to New York and lived with my mother in 1864, before the close of the war.

Q. Did you take your daughters with you? A. I did.

Q. Have you been living in New York ever since? A. Yes, sir.

Q. When you moved to Colquitt County with your husband about 1859, was there any railroads in that section of Georgia, Thomas and Colquitt Counties? A. No, sir.

Q. What was the condition of the country in respect to settlement? A. It was very unbroken, wild, and very few people.

Q. Was there any notable settlement right in and about Greenfield? A. There was a public school, a little church, and some manufactury, I think a country store and a mill.

Q. Who was living there at Greenfield? What prominent men? A. My husband, and Uncle Joel S. Graves.

Q. What kind of business did he carry on, what was he doing? A. He carried on a manufacturing business. I think he owned a store. I am sure he had a mill. I have seen people go to it.

Q. What else did he do besides? A. He was pastor of the church.

Q. Was there a church there? A. Yes, sir.

Q. Do you know who built it, caused it to be built? A. Well, I think Mr. Graves. I am quite certain he built it. It was there when I went there.

Q. Mr. Joel S. Graves? A. Yes, sir.

Q. Who was the minister there? A. He was.

Q. How about teaching there? A. Well they had a school in the church.

Q. What kind of church? A. Presbyterian.

Q. What kind of church building? A. It was a brick church.

Q. Church still there? A. It was when I was there last.

Q. When you were in Colquitt County last? A. Yes, sir.

Q. Known as Greenfield Church? A. Yes, sir.

Q. Mr. Joel S. Graves carried on some kind of manufacturing business there, what was that, do you know? A. He made buckets, a sort of pail.

284 Q. Cooperage business? A. I think it might be called that. He may have made barrels and casks. I am not certain. I remember especially about the buckets. I think it was called a bucket shop, bucket mill, something of that kind.

Q. During your husband's lifetime did your husband make any purchase of land from Joel S. Graves? A. He did.

Mr. PEARSALL: We object to that question as there is higher evidence as to the purchase of land. I will ask Mr. Erwin not to lead the witness.

Q. Look at this deed purporting to be signed in Thomas County, dated the 8th day of June, 1855, purporting to be signed by Joel S. Graves conveying certain lots of land to Cyrus S. Graves. State what you know about that?

Mr. PEARSALL: Do you tender that deed?

Mr. ERWIN: No.

A. That is written in my husband's hand.

Q. Which is written in your husband's hand? A. The body of the deed.

Q. Whose signature is that? A. Mr. Joel S. Graves.

Q. Is that in his handwriting? A. It is I should say.

Q. Did your husband have possession of this deed during his life? A. He had.

Q. Do you know what was the consideration of that deed? It recites the consideration the sum of $2940 do you know anything about anything further, what was the consideration of that deed? A. Well, I know that deed was given in payment of a debt of Joel S. Graves to my husband.

Q. Had there been large transactions between your husband and Joel S. Graves? A. He had had some heavy loans.

Q. Who had had? A. Joel S. Graves.

Q. From whom? A. From my husband.

Q. Mrs. Graves after the war did you make any visit to Thomas and Colquitt Counties? A. Not to Colquitt County.

Q. Thomas County? A. Yes, Thomas County, I think it was in, perhaps, '67.

285 Q. Later on did you and your daughters go down about '89? A. We did.

Q. When you went down there in '89, did you go there to see about those lands? A. We did.

Q. I do not want the details of it. What particular trouble or trouble with what particular lot of those lands mentioned in that deed that you have just testified about, did you go there to see about? A. I went to see about an encroachment that Mr. Phillip Norman had made on lot, I think it is, 347.

Q. One of the——? A. One of the six lots.

Q. The lots in the deed are 345, 353, 354, 383, 384 and 437? A. 437. It was one of the lots in the block. It was one lot off to the east.

Q. There were four lots right together and two separate? A. Yes, sir.

Q. Whom did you see about it there, what lawyer, I mean? A. Col. A. T. MacIntyre.

Q. The older gentleman, now dead? A. Yes, sir.

Q. What occurred, state what occurred?

Mr. HANSELL: I note an objection to anything that partakes of the nature of a contract, any statement on her part or anything partaking of the nature of a contract or agreement between her and Col. MacIntyre on the ground Col. MacIntyre is dead. I just like to make that objection once for all, to save the trouble of repeating it.

Q. State what did you do in reference to leaving certain papers with Col. MacIntyre? A. After Col. MacIntyre advised this trip to see Mr. Norman. We got a carriage and drove up there. We did not succeed in seeing him. We went back and reported to Col. MacIntyre and he said we had better bring a bill against this man to remove him and he arranged to make service and to conduct the suit

against this man. He had not interfered with the timber but only had a little farm started on the land.

Q. Did you leave any papers I mean in the hands of Col. MacIntyre? A. I did. I left all the papers that I had that he considered of any importance.

Q. That you then had? A. Yes, sir.

Q. Did you then have this deed from Joel Graves to Cyrus Graves? A. I did.

Q. That you have already testified about? A. I did.

Marked Exhibit No. 3.

286 Q. Did you leave him that paper at that time? A. I did.

Q. Look at this paper which I now hand you dated the 22nd day of March, 1848, purporting to be a deed from Eli Graves to Joel S. Graves, state whether you had that paper at the time? A. I don't think I had that paper at that time, and Col. MacIntyre told me about it, and he said that he thought it was in the custody of the Graves family.

Q. You got that paper afterwards? A. Yes, sir.

(Exhibit No. 4.)

Q. At that time did you have the plots and grants or were they obtained afterwards? A. Afterwards.

Q. Through whom did you get the Eli Graves deed just referred to which is marked Exhibit No. 4 by the Examiner, and the plots and grants in the same title to these lots? A. Through William McMullen.

Q. And from whom? A. He reported he got them from Spencer Graves and delivered them to Col. MacIntyre.

Q. Spencer Graves is the son of whom? A. Joel S. Graves.

Q. I will ask you to look at this deed from Joel S. Graves to Cyrus S. Graves referred to by you, marked by the Examiner Exhibit No. 3. I call your attention to an interlineation on the first page of the deed in purple ink, different color from the body of the deed which appears to be in black ink, doesn't it? A. Yes.

Q. The interlineation being above lot No. 353 and being in these words "sold to Dr. Bowers." I will ask you whether or not that interlineation was in that deed at the time you left it there with Col. MacIntyre? A. I never discovered it. I don't think it was. I am positive it was not or I should have noticed it.

Q. When did you get those papers back from Col. MacIntyre? A. In the spring of 1900 I think.

Q. You remember the occasion you got it back? A. 1899, when Col. MacIntyre withdrew from the business and the case that he had in the Court was transferred from that Colquitt County to the United States Court.

Q. At the time you put the case in my hands? A. Yes, sir.

Q. That was in 1899? A. Oh, yes, 1899.

Q. That was the first time you noticed that interlineation in it? A. It was.

Q. Do you know who called your attention to it? A. I think Mr. Erwin did.

Q. Myself? A. Yes, sir.

287 Q. Mr. H. T. Crawford, the defendant here in his answer to the bill in this case and also in his testimony states in substance that you made a statement to him at the time he met you which I believe was the first part of 1899 wasn't it? A. Yes, sir.

Mr. PEARSALL: I think that question is leading. I prefer you asking what the conversation was, if you question for the purpose of contradiction. Let her tell the conversation. Don't you tell it.

Mr. ERWIN: I want to put his statement of the case and I will not ask her whether it is true or false, I will ask her about the fact if such a statement was made, that is all.

Q. Mr. Crawford stated in a conversation had with you, you stated in substance that the deed from Joel S. Graves to Cyrus S. Graves under which you and your daughters' claim was received by Joel S. Graves as security for a debt, is that true? A. No, sir.

Q. It is not true? A. It is not true. The gentleman must have misunderstood me for I never had any such understanding of it.

Q. In fact was it received as security for a debt? A. No, sir; it was taken in payment of a debt.

Q. Did you make any such statement that it was taken as security for debt to anybody? A. I think not. I never had any such idea.

Q. Did you make any such statement to Mr. Cooper? A. No, sir. I could not have said so for I never had that idea.

Q. After putting that matter into Mr. MacIntyre's hands, as you stated, did you go up into Colquitt County in '89? A. I did.

Q. Who went up with you? A. My daughters and a gentleman by the name of William McCartney, the driver.

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Q. Did you go by private vehicle? A. Yes, we went by carriage.

Q. What was the purpose of your visit up there into Colquitt County? A. It was to look after the lands and most especially after this land.

288 Q. What lands? A. The lands covered by that deed.

Q. The six lots? A. Yes, sir.

Q. Referring to the deed to Cyrus Graves. While there did you see Mr. Norman? A. No, I went to his house.

Q. Did you see Mr. William McMullen on that trip? A. Yes, sir.

Q. Did you go to his house? A. I did.

Q. Now state in a general way what occurred between you and Mr. McMullen? A. We went to Mr. McMullen's house and we found him at home, and I talked with him about the conditions of the land. He told me the lots were all right except one, that Mr. Norman had trespassed upon, that he had made a little farm and put up a house on it.

Q. You mean Norman had? A. Yes, sir.

Q. That was a lot, not one of the four lots in the square? A. No, sir.

Q. I don't care so much about what Mr. McMullen told you about Mr. Norman as I want what took place between you and him relative to—— A. I arranged with him in regard to taking care of the lands.

Q. Had you known Mr. McMullen and family prior to that time; did you and he talk over that? A. I saw Mr. McMullen once before that, during the war.

Q. What did Mr. McMullen say to you in reference to looking after your lands there, to keep trespassers off? A. He said he would take the best care possible of it, that he would do all he could for me in regard to that.

Q. What was said about any payment to him for doing that, just state what occurred about that? A. I asked him what compensation I would have to pay, and he said he would not take anything from my hand. I said I would not want him to work for nothing. He said he had been doing something of that kind under the direction of Thomson. I said to him, I don't want you to work for nothing. He said, you have already done enough for me.

Q. What did he refer to about you having done enough for him? A. During the war I chanced to be at Quitman when his brother was returning, either himself or his brother, I don't know, the two were together; however, it was one of the McMullen boys, and I saw them as they got off the train. They were lying in a hungry sick condition about the station. I went to them and I ordered some breakfast from the hotel there that was kept by Mr. Mabbett, and I paid for a carry-all to take them to Greenfield.

Q. Did he allude to that in the talk? A. He did; he spoke of it.

289 Q. Then stated that— A. That he would be glad to serve me without any compensation, and I insisted he should have something. I stated to him, well, if you refuse I can do something perhaps for your wife. I handed him a five-dollar note, which he *took* took and said he would present to Mrs. McMullen, a lady whom I have never seen.

Q. After that time, on your return to New York, did Mr. McMullen continue for a number of years to correspond with you down there as your agent to look after that, and kept trespassers off? A. Yes, he wrote me a number of letters.

Q. You were in correspondence with him? A. Yes.

Q. Did he return the lands for taxes. A. He sometimes did.

Q. Is there anything about that 1889 trip to Brooks County and Colquitt County you want to mention, now, you think of? A. I do not know that there is anything specially.

Q. After that trip up there to Colquitt County, did you return to Thomasville? A. I did.

Q. And you left the matter in Col. McIntyre's hands there then? A. Yes.

Q. Later on, Mrs. Graves, did you ascertain the fact that Col. MacIntyre had gotten the back deeds to Cyrus Graves that you left

with him? A. I did; I think both he and Mr. McMullen wrote to me to that effect.

Q. When you left Thomasville in 1889, how long before you returned there again? A. Well, it was in 1898; I believe that was the date.

Q. What part of the year? A. Last of the year. I think we reached Thomasville the 30th or 31st of December.

Q. Prior to this last return there in 1898, had a controversy arisen in regard to lot 384 between you and Mr. Autrey? A. Yes, that was during the intervening time of my visit in '89 and '98.

Q. Who had charge of that suit against Mr. Autrey? A. Col. A. T. MacIntyre. I don't know but it was MacIntyre & MacIntyre.

Q. The firm? A. Yes, sir.

Q. That is A. T. MacIntyre, Sr., and A. T. MacIntyre, Jr. A. The one they called "Tom."

Q. That was a suit pending in the Superior Court of Colquitt County? A. Yes, sir.

Q. How long had that suit been pending when you went down there in December, 1898?

Mr. PEARSALL: We object to going into the contents of any
290 suit pending in the Superior Court of Colquitt County, it being a Court of record and the highest proof is a certified copy from the record.

—. How long had the suit been pending down there against Autrey? A. I think about six years.

Q. It was still pending when you went down there in '98? A. Yes, sir.

Q. What was the immediate cause of your going down to Thomas County and Colquitt County in December, '98? A. We had been informed by message, by telegraph and by letter, that Mr. McMullen had levied on one of the lots of land and that it was to be sold at sheriff's sale on the 2nd of January, in the coming year, 1899.

Q. You went down there to look after that? A. Yes, sir; especially.

Q. You went first to Thomasville, Georgia? A. I did.

Q. Were your two daughters, Miss Ida and Miss Minnie, with you? A. Yes.

Q. Did you know at the time you got to Thomasville anything about the fact that H. T. Crawford had entered upon or claimed any title to lot 383? A. No, sir; I had never heard of it.

Q. When you got to Thomasville, what did you do? A. I telegraphed Col. McIntyre as we left Atlanta.

A. Never mind what you telegraphed Col. McIntyre; I will ask you what you did after you got to Thomasville? A. We consulted with Mr. McIntyre and he advised——

Q. Never mind what he advised. I am asking you what you did? A. We reached there Saturday night, and Monday morning at 4 o'clock we left for Moultrie by way of Pidcock, to learn about that sale, and that was what we done Monday, and we returned the same day.

Q. Returned from Moultrie? A. Returned from Moultrie back to Thomasville.

Q. What did you do when you returned? A. We went to an attorney, Mr. Merrill, and had some papers made, I do not know what they might be called. It was to arrest that sale.

Q. You mean to stop the sale on the McMullen attachment of lot 354? A. Yes, sir; and he, with myself and daughters, went over to Judge Hansell to make application to stop that sale.

Q. Went over where? A. To Judge Hansell's residence.

291 Q. Where? A. In Thomasville, and the Judge granted the order.

Q. Temporary order? A. Yes, sir; we wanted to get Col. MacIntyre, but he had gone to his plantation. He was not in town. And that was why we went to Mr. Merrill.

Q. I call your attention to paper marked Exhibit No. 17 by the examiner, purporting to be a certified copy of an attachment suit brought by William McMullen in the County Court of Colquitt County, against Ida J. Graves and Minnie C. Graves and Jennie L. Graves, b-ought the 6th day of June, 1898, on an alleged account for services; I will ask you whether it was enjoining that suit that you [went to] the firm of Hansell & Merrill, or Mr. Merrill? A. Yes, sir.

Q. That was the suit? A. Yes, sir.

Q. I call your attention to the item in there for services alleged to have been rendered by Mr. McMullen, which are charged under date February 10, 1898, "To general services rendered for attending to and returning your land, Nos. 383, 384, 354, 345, 437, and guarding against trespassers for 12 years—$600." I will ask you whether or not in reference to that claim of Mr. McMullen's you signed an affidavit prepared for you by Mr. Hansell? A. I did.

Q. Look at this affidavit marked by the examiner Exhibit No. 15, purporting to have been signed by you on the 10 day of January, 1899, before Mr. Culpepper, Notary Public, that was your affidavit? A. Yes, sir.

Q. I will ask you whether that affidavit related to anything? I will ask you what you, in making that affidavit, had reference to in regard to certain lands there?

Mr. PEARSALL: I object to her going into parol testimony to explain an affidavit which is unambiguous, and parol testimony cannot now be gone into to explain what is plainly stated in the affidavit in another proceeding in another Court. Also object to the question as leading.

A. I think in that affidavit I stated I had no interest in the lands of which he mentioned and the lots which he stated he had been rendering services about, that I had years before transferred my interest to my daughters.

Q. In the lands? A. Yes, sir; in the——

Q. Lands in controversy? A. Yes, sir.

292 Q. That is what you understood by it? A. That is what I understand by it. That was as it was explained to me.

Mr. PEARSALL: I object to the suggestion made by counsel in stating the answer for the witness right along this line of examination.

Mr. ERWIN: We tender in evidence this copy of the record referred to, marked Exhibit No. 17.

Mr. PEARSALL: I have no objection.

Q. After getting that temporary restraining order against that attachment suit of McMullen and sale referred to, did you go up to Moultrie again? A. I did on the 2nd of January.

Q. Who went with you then? A. My daughters.

Q. Now you can mention what occurred on that trip, of the 2nd of January, 1899? A. We reached Moultrie between 9 and 10 o'clock, and at 10 o'clock the sale was appointed to have been made by the sheriff.

Q. That was all enjoining that sale. You need no bother about *about* the sale being enjoined. A. You mean for me to state to the Court what happened there?

Q. In going up there, did you have any occasion to meet anybody concerned in any of these lands? A. I met Mr. McMullen, William McMullen, and he explained to me what he had done. I said, Mr. McMullen, you have attached this land on a debt claimed against us, and he said yes. I says, you have never sent us any bill or made any allusion that we were in your debt. He stated he had told Col. MacIntyre that he was going to put a claim up against us, and that he had consulted Col. MacIntyre about doing it, and he said that this attachment he had made on this lot was made under the advice of Col. MacIntyre. I had always had implicit confidence in Col. MacIntyre. I says, I don't understand how that can be, Mr. McMullen. Said he, there are a good many things you cannot understand. Do you know that Col. MacIntyre himself has sold one of your lots of land? I said, "Impossible," and he beckoned to a gentleman who proved to be Mr. Crawford.

293 Q. Defendant in this case? A. Yes. I think he called him by that name of Tom. He said, Tom, will you show Mrs. Graves here what you have got in your pocket, and he said, I mean the deed, and he showed me the deed to a lot of land I at once recognized that it was a deed made in the handwriting of Col. MacIntyre. He said he was in possession and was turpentining it.

Q. Who said he was in possession? A. Mr. Crawford.

Q. What lot was that? A. I cannot——

Mr. PEARSALL: We will admit that is 383.

Q. You can look at this Exhibit No. 1, this little plot in evidence already. Mr. Crawford then had a deed in Col. MacIntyre's handwriting to lot 383? A. Yes, sir.

Q. In the 8th district of Colquitt County? A. Yes, sir.

Mr. PEARSALL: We want to object to her answer to so much of your previous question as went into the details as to what Mr. William McMullen told Col. MacIntyre; we think that is illegal and improper.

A. I said to Mr. Crawford, of course, I don't understand this at all. It is a great surprise to me. I am going back to Thomasville to-night and I will call on Col. McIntyre for an explanation of this matter. I says, I see that that deed covers one of the lots, one of our lots. Well, said he, I am occupying it and told how many hands he had at work, and teams; that he was cutting the trees for turpentine purposes. I insisted that he should discontinue, and he said he was there under a deed that had been examined, had been given to him by Col. MacIntyre, or had come from the MacIntyres. I talked some with Mr. McMullen, and I said to him that we were very tired from our journey, we had reached Thomasville, I could say but little more to him, but I says, now I shall go back to Thomasville the same day. I said to him and Mr. Crawford, we shall go back to Thomasville to-night. We shall go back to Thomasville to-night and come together again and have an understanding about this, and so we left the gentlemen and went back. I think the train only stays in Moultrie little more than an hour. I know it was very soon after dinner we went back to Thomasville.

Q. Did you return to Thomasville? A. We did.

Q. When you went to Thomasville, did you make any
294 investigations to find out whether or not there had been a deed made to Mr. Crawford? A. I did. I went the next day to see Col. McIntyre.

Q. I am not asking you what Col. MacIntyre said, but I will ask you whether or not you found out there was a deed? A. I found out there was a deed. I found that out. I think it was recorded in Moultrie.

Q. Recorded in Moultrie? A. Yes, sir; in the Courthouse there.

Q. You refer to the deed made by Hayes, administrator of A. T. MacIntyre, Jr., to Mr. John McMullen, and from John McMullen to H. T. Crawford? A. Yes, sir; I think that is what the records there show.

Q. There on that trip to Moultrie you last spoke about, or at any time thereabout, did you ascertain whether or not there had been trespasses on any of those other four lots constituting that square. You have testified you had a suit with Mr. Autrey about one lot, but the other three in that square, lot 353, lot 354, or lot 383, you have testified about lot 383. Now, the other two? A. I learned that there was but one of the lots that was unmolested. One of the other lots had been sold or claimed to have been sold and the timber had been cut, I think, on either the north or south half of it.

Q. Lot 353? A. Yes, sir.

Q. Well now, as the result of your discoveries in regard to those conveyances that had been made there, did you continue with Col. McIntyre as your attorney? A. I did for a while counsel with him.

Q. How long? A. Until this suit was discontinued in that court, Colquitt Superior Court and I employed you (Mr. Erwin).

Q. It was but a short time from that time until the suit was dismissed, when you discovered it? A. A very short time I think. You came in March, and I corresponded with you in February.

Q. The suit in the state court was dismissed and then you brought these proceedings in the United States Court. A. Yes, sir.

Q. Mrs. Graves, did you ever hear prior to 1899 when you came down there, of any alleged deed from Cyrus Graves, your husband, to Abram Graves for any of these lots of land? A. I never did.

Q. What is that? A. No, sir; I never heard of it.

Q. Did you and your daughters make any investigations
295 of the record when you went down there in January 1899?
A. We did. You mean for such a deed?

Q. For any deed?

You made some considerable investigation down there then yourselves? A. Yes, sir.

Q. You never have found any record of any deed of that sort? A. No, sir.

Q. At the time of the preliminary hearing before Judge Speer in this case for injunction, here in Macon, very shortly after the hearing—I mean the same day—while Mr. Crawford was up here, did you have a talk with Mr. Crawford at the Hotel Lanier? A. I did.

Q. Did he make any statement to you in regard to writing a letter to you prior to his purchase of lot 383, or alleged title to lot 383, from John McMullen? A. He did. He told me he had written a letter to us in regard to buying that lot, but that the letter came back to him unopened. I asked him if he had the letter. He said no, but he saw the letter only a few days before on his desk; I think he said at his store, however it was at his desk.

Q. Mr. William McMullen testified in substance that on an occasion when he went up to Thomasville to see you and saw you at the Mitchell House about getting certain money from Phillip Norman, with whom you had compromised the original suit—— A. Yes.

Q. That you told him that Col. MacIntyre was mad with you, and you believed that Col. MacIntyre would have killed you if you had not gotten out of his office quick. Did any such occurrence take place, any such conversation between you and Mr. McMullen? A. No, sir; I never thought of being afraid of Col. MacIntyre.

Q. If he did testify to anything of that sort, if Mr. McMullen did testify to that effect, was it true that you had such a conversation with him? A. No, sir.

Q. Did such an occurrence occur between you and Col. McIntyre? A. No, sir. I wanted Mr. McMullen to go with me to Col. MacIntyre.

Q. I ask you to look at these letters purporting to be from Mr. McMullen to you, marked Exhibits 25, 26 and 27. I will ask you whether you received those from Mr. McMullen in due course of mail? A. I think I did. That is addressed to my residence.

Mr. PEARSALL: Those letters are admitted.

296 Q. Also the other letters of William McMullen, Nos. 28, 29, 30, addressed to Miss Minnie and Miss Ida Graves?

Mr. PEARSALL: They are admitted.

Q. Mrs. Graves, at the time that this matter of the deed to Mr. Crawford was made up and the title Mr. Crawford claimed under,

did you have a conversation with Colonel MacIntyre? I do not ask what it is. I ask whether or not you had some conversation with him in reference to James J. Redd? A. I did.

Q. Did Col. MacIntyre at that time give you any paper as a paper made by the original James J. Redd, who had lived at Joel Graves?

Mr. PEARSALL: We object to going into anything Col. MacIntyre did or said. It would be eminently unfair to the defendants in this case. We do not know under what circumstances they were given. Col. MacIntyre is dead, and what conversation took place between them, what paper was identified, for what purpose it was given, is illegal and improper, and we object to it.

Q. Look at this paper, which is attached to the affidavit made by you in the first hearing we had in this case before Judge Speer, in your affidavit of May 11, 1899, look at that little paper attached to it, and state whether or not that is the paper? A. That is the paper that the Colonel gave to me.

Q. State how it reads for identification? A. "One day after date I promise to pay Thomas Morticer or bearer five dollars, for value rec'd 1st day January, 1860.

JAMES J. REDD."

Exhibit No. 34.

Mr. PEARSALL: We object to that as being improper and illegal. There is no evidence whatever that that was the signature of James J. Redd, or what circumstances it was given. Simply a paper signed J. J. Redd. It may have been signed by anybody. No evidence that it is Redd's signature. It therefore is incompetent as any paper might be.

Q. Col. MacIntyre was living at the time this affidavit was made in this case? A. Certainly.

297 Q. And field in the record here? A. Certainly.

Mr. ERWIN: I tender in evidence this note, signed by James J. Redd, which note was received from the custody of Col. A. T. MacIntyre.

(Exhibit No. 34.)

Mr. PEARSALL: We object to this paper which counsel state is a note, without any evidence, except a mere opinion on his part as to what it is or as to who signed it. There is no evidence that this is James J. Redd's signature, nor that it is a note or under what circumstances it was brought into Court.

Q. I will ask you to look at this letter dated August 12, 1897, addressed to you and signed A. T. McIntyre, state whether or not you received that from Col. MacIntyre? A. Yes, sir.

Mr. ERWIN: I offer that in evidence.

Exhibit No. 35.

Q. Look at this letter, dated June 23, 1890, addressed by MacIntyre & MacIntyre to Minnie C. Graves, Cincinnatus, N. Y.,

headed, Dictated by A. T. M., Jr., state if you know of the reception of that letter by Miss Minnie, your daughter? A. Yes, sir.

Mr. ERWIN: I offer that in evidence.
Exhibit No. 36.

Q. Look at this letter, dated June 18, 1890, addressed by A. T. MacIntyre, Jr., to you, state whether you received that by due course of mail from Mr. A. T. MacIntyre, Jr.? A. Yes, sir.

Mr. ERWIN: I offer that in evidence.
Exhibit No. 37.

298 Mr. PEARSALL: We object to these two letters signed A. T. MacIntyre, Jr., as he is dead. No evidence can affect him.

Q. Mr. ERWIN: You admit that was the signature of Tom MacIntyre, Jr.?

Mr. PEARSALL: Yes, I think that was his signature. No, I don't think it is his signature, but we admit that was from his office.

Q. When you took the attention of your suits and lands in Colquitt County out of Col. MacIntyre's hands, in the early part of 1899, did you get back all of the original grants, plots and grants from the State? A. I think not.

Q. You did get back some from him? A. I think one was missing, as I remember.

Q. From those that he had? A. Yes.

Q. You turned those over to me? A. I did.

Q. The grants which you got from him you did turn over to me? A. Yes. He supplied two from Atlanta in some way.

Q. You got certified copies of original grants from some of them? A. Yes.

Mr. ERWIN: We tender in evidence original plots and grants from the State to the following lots of land in the 8th district of now Colquitt County, formerly Irwin and then Thomas County, originally, to Eli Graves, as follows:

For lot No. 354, Exhibit No. 38.
For lot No. 437, Exhibit No. 39.
For lot No. 345, Exhibit No. 40.
For lot No. 383, Exhibit No. 41.
For lot No. 384, Exhibit No. 42.

Mr. PEARSALL: We object to plot and grant for lot 354, because there is no perfect seal of the State attached. Same as to lot 437, and as to lot 384, there is no seal at all.

Mr. ERWIN: We tender certified copy of plot and grant
299 to lot 384 in the 8th district, duly certified by Phillip Cook, secretary of State. The original grant is there, but the seal being broken off we supplement it by a certified copy from the secretary of State's office.

Exhibit No. 43.

Mr. PEARSALL: I believe that is not the proper way to get it in, but that is immaterial.

Mr. PEARSALL: We offer in evidence certified copy of plot and grant from the Secretary of State's office, for lot No. 353.

Exhibit No. 44.

Mr. PEARSALL: We object to the introduction of a certified copy until they first show, or account for the original.

Q. The originals of all these lots and grants were in the possession of Col. MacIntyre, were they not? A. I suppose they were. I did not hear any complaint about the papers, that they were not all in.

Q. Did you ask him for them when you took the papers back, you asked for all he had? A. Yes, sir.

Q. And these were all you could get? A. These are all he gave me.

Mr. PEARSALL: We withdraw objections to plots except to copy of 383 (353).

Mr. ERWIN: I tender in evidence the original deed dated the 22nd day of March, 1848, from Eli Graves to Joel S. Graves, for a number of lots, including in the lots the six lots mentioned in this bill, and which deed purports to be recorded upon the records of Thomas County, Georgia, the 15th day of March, 1849, in Book E, on page 371, by J. G. Dekyl, clerk.

Exhibit No. 4.

Mr. PEARSALL: No objections that we see on the face of it.

300 Mr. ERWIN: Everybody claims under that deed. That is admitted.

Mr. PEARSALL: Unless we show prior to that time another deed was made.

Mr. ERWIN: I tender in evidence original deed dated the 8th day of June, 1855, from Joel S. Graves to Cyrus S. Graves, for lots of land 345, 353, 354, 383, 384, 437, which deed has entered upon it that it was recorded in the clerk's office, Superior Court of Thomas County, Georgia, June 11, 1855, in Book F, page 677, Jared Everett, clerk. Also that it was recorded in the office of the clerk of the Superior Court of Colquitt County, Georgia, in Book C. D. R., page 408, 409, April 2, 1889, E. H. Bryan, clerk.

Exhibit No. 3.

Mr. PEARSALL: We object to this deed tendered on the ground that it was a deed made to secure a debt. There has been no proceeding in Court on the part of the complainants to make it a fee simple conveyance. We object to it further on the ground of the interlineation of the consideration, that is unexplained. We object to the entry of record on the ground that it was not witnessed by any officer, and the probate or intended probate does not show that the deed was ever delivered, and therefore it could not be admitted to record. The second attempt to probate it was made before Judge of the County Court of Thomas County, who was not authorized to administer an oath for that purpose. It also appears that the same person who witnessed the deed as original witness did not probate it.

It does not appear that the witness whose name appeared as a witness to the original deed signed the probate, the last effort of probate. That on its face it appears that the same person whose name appears as Samuel L. Moore on the original deed is not the same person who probated the deed, made on March 30, 1889, that

that probate appears on its face to have been a forgery, and therefore there has been no sufficient evidence on the face of the deed that it was ever sealed and delivered as the deed of Joel S. Graves.

We further object to it on the ground that it is offered by parties at interest, and there appears an interlineation which alters the contract, which interlineation is not explained.

301 Mr. ERWIN: We do not offer in evidence that entry on the deed in black ink above lot 353 in these words, "Sold to Dr. Bower," it appearing that said entry was put on the deed after it was put in the possession of Col. A. T. MacIntyre and A. T. MacIntyre, Jr., adversely to these parties complainant, and the defendant, H. T. Crawford, claiming lot 353 under A. T. MacIntyre, Jr., and said interlineation being the unwarranted act of A. T. MacIntyre, Jr., or A. T. MacIntyre, Sr., or somebody acting for them, said entry showing it is no part of the deed itself.

Mr. PEARSALL: Then we object to the deed under that statement, as they must tender the deed as it appears, or they cannot tender it in part and reject it in part, and it further appears that A. T. MacIntyre, Jr., and Sr., were the agents of these complainants, and if it was the act of theirs, it was the act of their agents, and they are bound by it as matter of law.

It further appears that the deed purports to have certain exhibits which are made a part of the deed, and refers to plots and grants made to Eli Graves, when said plots and grants are not submitted here as part of this deed, therefore they do not submit any evidence of the necessary parts of the deed, which deed on its face shows should go with it.

We object to this re-record in Colquitt County as not being authorized by law.

Q. At the time you visited Thomas County in '89, did you execute a paper conveying any part of these six lots to your daughters? A. I did.

Q. Look at that deed and state if that is it? A. That is the same. That is my signature.

Q. That is the deed? A. Yes, sir.

Mr. ERWIN: I tender in evidence deed dated 30 March, 1889, from Jennie L. Graves to Ida J. and Minnie C. Graves, of all her interest in lots 345, 354, 384 and 437, in 8th district of Colquitt County. The deed purports to be recorded in the Clerk's office of the Superior Court of Colquitt County, Georgia, in Book C. D. R., page 410, April 2, 1889, E. H. Bryan, Clerk.

Exhibit No. 45.

302 Mr. PEARSALL: We object to the introduction of this deed, as it does not appear to have been witnessed by an officer authorized by law to attest a deed to admit it to record.

Cyrus L. Graves died testate or intestate? A. Intestate.

Q. When you lived in Colquitt County, did you ever meet James J. Redd? A. I never met him there.

Q. Did you ever meet him anywhere? A. After we moved near Thomasville.

Q. Along about that time? A. Yes, it was some time I think in '59 or '60, perhaps during those years.

Q. Did you know him to work about the Joel S. Graves place? A. I knew him in this way. He used to drive a wagon from the factory up there to deliver buckets or sell buckets in Thomasville around about the country, and he used to come to my father-in-law's house to stay.

Mr. PEARSALL: We object to that as being immaterial and irrelevant to the issue in this case.

Cross-examination.

(Mr. HANSELL:)

Q. Did you deliver these plots and grants to Col. MacIntyre yourself, or was he to get them from somebody for you? A. I did not deliver them.

Q. Were you present when they were delivered? A. No, sir; but the Colonel told me and Mr. McMullen wrote me about getting them of Spencer Graves, and the Colonel had them.

Q. When he turned them over to you, he turned over all he had gotten, as he said? A. I could not say about that.

Q. You had never seen them before? A. No, sir.

Q. Never saw them until you saw them in Col. MacIntyre's hands? A. No, sir.

Q. So you don't really know anything about how many he got, except that he said he turned over to you what he had? A. I only know that he wrote me that he had plots and grants.

Q. He did not give the number? A. I think not. I think that he told me that there were two that he did not find, and that I remember remitting to him for the expense of getting them from Atlanta.

303 Mr. ERWIN: In getting certified copies? A. Yes.

Q. A. T. MacIntyre, Jr., was the active man in the business up to about '89, and some little time after that, so far as you know? A. Sir?

Q. A. T. MacIntyre, Jr., Tom MacIntyre, was the active one of the firm. A. I never saw Tom MacIntyre but once. Whenever I had any consultations it was with the Colonel.

Examined by Mr. PEARSALL:

Q. As a matter of fact you never saw those original plots and grants until they were turned over to you by Col. MacIntyre in 1899? A. Yes, I saw them. He had the papers about his office, but I never had them to examine them carefully.

Q. When is the first time you ever saw the plots and grants? A. During my last visit down here in '89.

Q. That is the first time you ever saw them? A. '98, I mean.

Q. You married Cyrus Graves in '57? A. Yes, sir.

Q. When is the first time you knew Joel S. Graves? A. In the winter of '59.

Q. Did you know anything of his financial condition as to

whether he was a person of money at that time or not? A. Well, I don't know personally; only from report.

Q. The report that you did hear was that he was in straightened circumstances for money? A. I know he wanted to get loans.

Q. And he applied to your husband for a loan, did he not? A. I think he did, several times.

Q. You state that this deed from Joel S. Graves to Cyrus Graves was made in the payment of a debt? A. Yes, sir.

Q. And not as a security deed? A. Not as a security.

Q. When did you first know Cyrus Graves? A. In '54.

Q. Did he discuss with you before you were married the business of Joel S. Graves? A. Not very fully.

Q. Did he discuss with you this special transaction? A. I do not remember that he did.

304 Q. If this deed from Joel S. Graves to Cyrus Graves bears date two years before your marriage, does it not? A. I think it is '55.

Q. Then, as a matter of fact, you do not know whether it was given in payment of a debt or given as a security deed? A. I know what I have heard my husband say about it, my father-in-law.

Q. Didn't Joel S. Graves apply to your husband for an additional loan of $1,000? A. I think he asked him for $1,000 when we were in Greenfield.

Q. And he told him he would not let him have it unless he would make him this deed? A. O, no, sir.

Q. You knew nothing about that transaction? A. I never heard of that.

Q. Do you remember anything about a transaction in which Mr. Joel S. Graves went off with some lap robes belonging to Cyrus Graves? A. No, sir; I don't think my husband ever had a lap robe in this country.

Q. You never made such a statement as that to anybody? A. No, sir.

Q. Anything about getting a horse and carriage from Cyrus Graves? A. We never had a horse and buggy.

Q. You never made any statement to anybody relative to such transaction? A. No, sir; I never knew of any such thing.

Q. Did I understand you to say on the direct examination that the first time you knew that Mr. Crawford made claim to lot 353 was in Moultrie? A. Yes, sir.

Q. In the town? A. Yes.

Q. And that William McMullen told you of it? A. Yes, sir.

Q. And called Mr. Crawford up to verify the statement? A. And show me the deed.

Q. Let me refresh your memory, wasn't it on the train? A. No, sir.

Q. Did you have any conversation with Mr. C. W. Pidcock, superintendent of the Georgia Northern Railroad? A. I did in regard to McMullen.

Q. You did not as to this special lot? A. No, sir; I did not know of it.

Q. Did you have any conversation with Mr. Crawford on the

train. A. I did in the visit I made afterward, after I had been to Moultrie. I think it may have been when I went up on the 2nd. I went up to Moultrie on the first of January. I went again on the second. I think on the 2nd Mr. Pidcock, one of the brothers,
305 I think at that time called the gentleman, Mr. Crawford, to the train and I saw him. I don't think I spoke with him, but my daughter did.

Q. Was that the first time you had ever seen him? A. No, sir; I saw him at Moultrie on my first visit there.

Q. Are you very positive you did not meet him the first time and have a conversation about his claim on this lot, on the train? A. No, sir. I had a conversation with him, rather my daughters, as I remember it, did, I think on my second visit. On the first visit I did not know of it. I did not know of it on my first visit.

Q. The first notice you had of Mr. Crawford's claim to this lot was from Mr. William McMullen? A. It was from Mr. McMullen.

Q. This paragraph 24 of your original bill says one ground you set up as cause of asking for relief against William McMullen is that this charge for services were not rendered under any contract and that instead of rendering the service charged for in said account, speaking about the account in that attachment, that said William McMullen was at and during a large part of the time for which said services were charged, actively engaged in defrauding your orators out of the lands and the turpentine and timber thereon. What special part in this actively defrauding did Mr. William McMullen engage in? A. I am unable to say.

Q. You are unable to say? What is your opinion? Can you guess about it? A. As to what he done?

Q. Yes, ma'm? A. If you will ask the question again.

Q. You say that at and during a large part of the time for which said services were charged, that he was actively engaged in defrauding your oratrix, referring to yourself and your two daughters, out of the lands, and turpentine and timber thereon? A. That appeared so from the conditions in which we found things there. It seemed that he had a hand in the deal with Crawford, and he also had attached and was about to sell that lot, and as I understood from Mr. Autrey——

Q. Never mind what you understood? A. I was going to explain, he stated that he had allowed him certain privileges.

Q. What circumstances was there connected with this sale of this lot 383 to H. T. Crawford, did you think William McMullen had any connection with? A. I think he had. I think his son had. I don't know whether he himself did, but there was a family interest in that lot, and they received part of the avails of it at the time of the sale.

306 Q. You mean John McMullen? A. I mean John McMullen.

Q. And your grounds, then, for believing that William McMullen was actively engaged in this defrauding was because his son—— A. Not entirely that. Because Mr. Crawford told me that the McMullens were interested in that lot.

Q. When did he tell you that? A. He told me that at Moultrie.

Q. In the presence of whom? A. I do not know the people up there, but there was quite a number about. I do not know who may have heard it. It was in a conversation with myself.

Q. As a matter of fact, Mrs. Graves, do you believe Mr. William McMullen was a party to that transaction? A. Well——

Mr. ERWIN: We object to that question, on the ground that the question of Mrs. Graves' belief is immaterial. It is a question involving a great many facts. For instance, we have the answer of Col. A. T. MacIntyre here, in which he states that William McMullen was concerned in the sale of that lot to Crawford. We have the testimony of Mr. Merrill here that he was concerned in the matter of the sale. I object to it on the ground that the question is an improper one, to get at the belief of Mrs. Graves, who is not only a witness in her own behalf, but she is a witness on behalf of the two other complainants here, and Mrs. Graves' belief is what you are trying to get at. The question of Mr. McMullen's fraud or not fraud is a question for the Court to try, and not Mrs. Graves' belief about it one way or the other. I do not know what she would answer about it, for she was not present when all the testimony was taken about Mr. McMullen's concern in it, and her belief is immaterial, irrelevant and improper testimony. Subject to that objection you can answer the question.

A. Under the present circumstances and what I know and what has come to light since that attempted sale, I would say that I believe that Mr. William McMullen was engaged and interested in the sale of that lot.

Q. You believe that he was actively engaged in defrauding you out of your interest in these lands? A. Things go to show that way.

Q. That is your conclusion in this matter? A. It is.

Q. In referring to "defrauding," Mrs. Graves, what do you
307 mean by that. Do you mean that he was trying to use titles that were forged? A. I believe that he was disposing or helping to dispose of property that did not belong to him.

Q. And he was doing it under titles forged and which he knew were forged? A. He was doing it, I think, under the titles that have been produced here.

Q. Did you state you were under no obligation to pay Mr. McMullen for any services he rendered to you? A. I never was under any contract to pay him anything. I stated in my direct testimony the conditions upon which he agreed to take care of my land.

Q. Without any contract? A. I have no further contract with him except this verbal contract that I had, he promised to take care of my land and he would not accept compensation.

Q. Do you think he is entitled to any compensation for services he has rendered to you? A. Well, we are very clever if we pay a man that does not charge us anything. He never sent me any bill. I had no reason to believe that I owed him anything. In fact, I don't know what he ever done, except a few things that may have been related in this case.

Q. Do you think you were under no moral obligation to pay him for his services? A. Moral obligation?

Q. Yes, mam? A. I can hardly say I considered I was under any obligation toward him.

Q. Then, what do you mean in this part of your suit, you say that the levy of said attachment in the manner and form aforesaid by the said William McMullen was a great wrong, injury and fraud upon your orators, and a breach of the trust reposed in him and which he had assumed towards your orators in the premises? What trust do you refer to? A. I trusted my interest and the protection of those lands to him.

Q. You think that was worth no compensation from you? A. Not in the way he took care of them.

Q. Was there any trust, if there was no obligation to pay him? Do you think there was a trust on his part to comply with any obligation to you? A. I think he placed himself under obligation when he promised to take care of it.

Q. You were under no obligation to pay him? A. So long as he did not demand any, did not require any, and refused it.

Q. You say he did not do any services about these lands? A. I say he did not do me any good services, so far as I judge by the conditions.

Q. How many original title papers did you have in 1889?
308 A. Well, I had the deed. I did not have the plots and grants.

Q. You had nothing except a deed from Joel Graves to Cyrus Graves? A. I think not.

Q. Then where did you get these plots and grants that have been introduced as evidence in this case? A. It was the Colonel and Mr. MacMullen who got them.

Q. Do you consider that was any service to you? A. It was in one sense. It may have been a service, but he refused to be paid for any service that he might render.

Q. That was in '89? A. That was in '89.

Q. You never paid him anything, have you, except $5 you gave his wife? A. No, sir.

Q. He reported to you about the trespasses on these lands? A. I think Mr. McMullen did.

Q. Do you consider that was any service to your interest? A. Well, it was a service.

Q. Have you ever paid him anything for it? A. No, sir.

Q. If as a matter of fact, Mr. McMullen went from Moultrie to Thomasville two or three trips in the case relating to the Autrey land, paid his own expenses, horse hire, hotel bills down there, do you think it is right he should have to pay those expenses in matters pertaining to your suit? A. Under those conditions, if Mr. McMullen had sent to me a bill I should certainly have paid him.

Q. Mr. McMullen is an ignorant man, isn't he? A. Not entirely so. I did not consider him so.

Q. Do you know his handwriting? A. I have had a good many letters from him.

Q. Judging from these letters, don't you know he is an ignorant man? A. He may not be a good writer, but he is not what I should consider an ignorant man. If he had been, he was recommended to by Col. MacIntyre as being a capable man.

Q. But he has had no experience in the matter of commercial dealings, has he? A. I do not know, sir.

Q. Would you judge so? A. Well, I could not judge from the little I know of him.

Q. Did Mr. McMullen ever return these lands for taxes, Mrs. Graves? A. He did.

Q. He conferred with you about them, didn't he? A. He sometimes returned them, sometimes failed to do so.

Q. How many law suits have you had about these lands? A. There was an action against Mr. Phillip Norman.

Q. Mr. McMullen attended to your interest in that matter? A. I do not know what Mr. McMullen did in that matter.

309 Q. If he did attend to that, you never paid him anything? A. I never paid him anything.

Q. Who first notified you about A. A. Autrey trespassing on your land? A. I don't know whether Col. McIntyre wrote me or whether Mr. McMullen did, but they both wrote me. I know I have a letter from Col. MacIntyre stating that Mr. McMullen informed him something to that effect.

Q. You have never paid him anything for any service rendered on that Autrey case? A. No, sir.

Q. You have settled the case with Mr. Autrey? A. Yes.

Q. Had Mr. Autrey pay you for the timber on that lot of land? A. I think he has not paid for the timbers yet.

Q. I read you this part of this answer, paragraph 15: "Your orators further aver and charge that about the latter part of the year 1893 the said William McMullen notified your orators by letter that one D. A. Autrey had commenced to trespass upon lot No. 384 aforesaid, and thereafter the said A. T. McIntyre filed a suit against the said Autrey in the Superior Court of Colquitt County." Is that true? A. I think so.

Q. What did he agree to pay you for the timber? A. I think he was to pay us $800.

Q. Was that for the sawmill and turpentine? A. That was for the sawmill privilege.

Q. Didn't you have some trouble with Mr. Autrey or with Mr. Autrey's attorneys about the purchase of money that he agreed to pay you for the timber on that land? A. I did have some trouble with Capt. Hammond.

Q. He was representing Mr. Autrey, wasn't he? A. He was not at the time that he made me the trouble, as he explained to me. He said if Mr. Autrey had taken the matter into his own hands, he might conduct it, but he should pay him, he would have to pay him $300, and so he sent to me for whatever papers I might have had.

Q. I believe there was some proceeding by which you were arrested, was there not?

Mr. Erwin: I object to going into that question of trover suit for papers as irrelevant and immaterial, and also to the compromise and settlement between Mrs. Graves and daughters and Mr. Autrey as

being irrelevant and immaterial, and a copy of the trover suit would be the best evidence of what it shows.

Q. It is true that you were taken in charge by the sheriff
310 of Thomas County, were you not? A. The sheriff came to the train and demanded that I should give to him certain papers which Capt. Hammond had placed in my hands, saying that they might be of service to me, that they were of no use to him, and afterward he seemed to have come to the conclusion that he wanted them and he took that way to get them, and I refused to deliver them because there was among them a paper that my daughter had indorsed and I did not want it subjected to what it might meet with. I had those papers. And I want to state right here before that was done, as soon as the telegraph office opened in Thomasville in the morning before I had seen Capt. Hammond I and one of my daughters went to the telegraph office and I have a copy of the telegram which I would be pleased to show, where I explained to Mr. Autrey that I had both note and the check and which I would take to Macon. I was coming to Macon. I had waited until 9 o'clock hoping to see him, and that I would return them to him if that was what he requested, or we would—in the further settlement of the business the thing would all be made satisfactory.

Q. Isn't it a matter of fact you had both Mr. Autrey's note and his check in payment of it? A. I had both note and check and I telegraphed that to Mr. Autrey.

Q. You were coming off with both in your possession? A. I was going away, but not without notice. I was coming up to consult with my attorney. I want to say this, that evening before when I was to see Capt. Hammond and he gave me, or, rather, my daughter, the check, I told him if I do not see Mr. Autrey I will correspond with him and will let him know that I have this, and I want to take the whole matter and subject it to Col. Erwin in Macon, and he said it was of no use to him, take it along. He wanted my daughter to indorse the note and let him have it.

Q. To whom did you apply for assistance when the sheriff had you there? A. Well, I met Col. MacIntyre on the street, and I told him what had occurred and *the* [he] voluntarily helped me as any gentleman would under the circumstances.

Q. You did not go to him first? A. He told me, said he, I will attend to all that for you.

Q. He did attend to it? A. I do not know what was done. I did not go any further. I know that he discharged the sheriff at once. Said you have no business with these people. They have the right to take these papers to their attorney.

Q. But whatever was necessary, he did? A. I heard noth-
311 ing more from it. I had nothing in my custody but what Col. Hammond had placed in my hands, with his full consent.

Mr. PEARSALL: We are not questioning anything like that. The purpose is to show that Col. MacIntyre was your friend at that time

and that he had not been guilty of all these things which seem to have been intimated in the bill. That is the purpose of this question.

Q. William McMullen corresponded with you regularly about your lands, did he not? A. Occasionally, not regularly.

Q. There was nothing in his letters to indicate that he was not dealing honestly with you? A. He wrote very fairly.

Q. Did he write you anything about Col. McIntyre? A. Yes.

Q. Did you reply to those letters? Do you know of your replies to those letters? A. I think, I remember that he wrote to me and he told me that I must change attorneys.

Q. Here is a letter taken from the files of the examiner, Exhibit No. 27, dated 1895, addressed to Mrs. Jennie L. Graves, Cortlandt, N. Y.: "Dear Friend i am very much surprise at yo all it learng th that you hav got insulted with mee and i now that i have done all for yo that lay in my power." To what did that refer? It is signed William McMullen. A. I do not know.

Q. You do not know what he was referring to? A. I could not interpret for him.

Q. Had you written him any letter probably before that? A. I was in correspondence with him. I was beseeching him to take care of my interest there.

Q. And further: "i have paid money out of my one pocket to help yo proteck yore land i also got the plot and grants for yo that yo never wold of go it it had not Bin for me of corse it was not one cent to me only i wold like to now what I hav don to cause yo to get insulted at as i have tride to befrend yo i will say to yo that yo better get soune one that will treat yo right to look after yor lands while if I have Jon eny thing ronge i am truly sory of it you can ancer this or doo as you lik i rite several times and never herd from you. So i close yore frend as ever Wm. McMullen." Did you inquire as to whether or not he had paid out any money in your interest or not? A. I do not know that I did.

Q. You had notice by that letter that he had paid out money in your behalf, did you not? A. Was that letter sent to me?
312 A. It was sent to you. Q. Of course it does not state how much.

Q. He gave you notice he was paying out money in your behalf? A. The letter would indicate it.

Q. You never offered to pay him anything for it? A. I do not know what I may have written him.

Q. You never paid him anything, as a matter of fact, have you? A. No, sir; I never paid him anything.

Q. You say that this interlineation in this deed from Joel Graves to Cyrus Graves you never noticed when you turned it over to Col. MacIntyre? A. No, sir.

Q. If it was on there, you never noticed it? A. I never saw it.

Q. If it was on there when you turned it over to Mr. Erwin, you never saw it? A. I think Mr. Erwin called my attention to it first.

Q. And it is possible that it may have been on there when you turned it over to Col. MacIntyre? A. I had not had those papers

undone to examine them at all from the time they came. They were wrapped up in my papers.

Q. You will not say that at the time you turned it over to Col. MacIntyre the entry was not on there? A. At the time I gave it?

Q. Yes? A. When I gave it to Col. MacIntyre?

Q. Yes? A. I am sure it was not on there, because I had had it in my keeping.

Q. You had never noticed it? A. I did not notice it. It was not there.

Q. You did n-t notice it when you turned it over to Mr. Erwin? A. I say I had not had it undone when I went to my trunk and brought those papers out for Col. Erwin's inspection.

Q. How long had you had them in your possession? A. I cannot say, only a little time.

Q. I take them from the files Exhibit No. 15 and ask whether or not that is your signature and you verified that? A. That is my signature.

Q. I will ask you if this part of the affidavit is true, "that she and her two daughters are the only heirs at law of Cyrus S. Graves and that as such she (referring to yourself) had an interest in certain lands in Colquitt County, but that some time since she conveyed all her interest in said lands to her two daughters, Minnie C. and Ida J. Graves, and since then has had no interest in the lands in said
313 Colquitt County." Was that true at the time you verified it?
A. What is that affidavit relative to?

A. [Q.] It is relative to proceedings in the Superior Court of Colquitt County to enjoin the levy of Mr. MacMullen's attachment? A. I had reference to having any interest in the lands which Mr. McMullen described he had been protecting.

Q. Does it state in the affidavits. It says all the lands and certain lands in Colquitt County? A. "In certain," yes, sir.

Q. Why was it that in 1899, I believe, when you made a deed to your two daughters you did not include lot 353 in it? A. I do not know why it was not included. It was, perhaps, an oversight on the part of the person who made the deed. I do not know why it was not included. I supposed it included them all.

Q. You signed that? A. I signed that. It was prepared by Col. MacIntyre and presented to me for assignment, and I signed it.

Q. You did not know what was in it? A. I knew what he said. He said, advised me to make assignment of my interest in Colquitt County to my daughters.

Q. And you did so? A. And I did so.

Q. You did not convey this lot 353? A. I supposed I was conveying it.

Q. Don't you know when was the last time you made any claim to lot 353? A. I don't know but it was today.

Q. Did you ever know about the lands that were returned for taxation as your lands and your daughters' lands? A. I knew about them so far as paying taxes.

Q. Did you know whether lot 353 was returned or not? A. I can say I suppose it was.

Q. Did Mr. E. O. Thomson ever represent you to return these lands? A. He did.

Q. What relation was he to you? A. He married my husband's sister.

Q. He is a reputable man, a good man, so far as you know, is he not? A. I do not want to speak. I would not want to say anything about him. He is in the family.

Q. Well, he is a good man is he not? A. I cannot say that he is.

Q. This part of Mr. Thomson's evidence taken in Thomasville: "Q. Did she (referring to you) ever claim this property?" Referring to this lot 353. And his answer: "I did not understand
314 it until this last time she was here that she would probably claim it. She inspected the Courthouse for all manner of deeds and doings, and I think she knows more about this Courthouse than any lawyer in Thomasville." That until after that time you never made any claim to this land, until this last trip down here? A. I have always claimed it. When I was down the last time I learned about it. I searched very diligently to see if I could find any deed.

Q. Didn't Mr. E. O. Thomson tell you he had sold that as the land of Mr. Abram Graves?

Mr. ERWIN: I object to any effort to prove a deed from E. O. Thomson to anybody else to the land in controversy here by statement of E. O. Thomson to Mrs. Graves, E. O. Thomson not being a party to this suit, and it being hearsay and incompetent evidence.

Q. Didn't Mr. E. O. Thomson as administrator of Abram Graves had sold this land to Bruce and Bower? A. He told me so the last time I was down there.

Q. Didn't he further tell you Cyrus Graves made a deed to that lot to Abram Graves' father, 353? A. He did not give any numbers. He was unable to.

Q. Didn't he tell you he had sold one of the six lots? A. He told me he had sold one of the six lots.

Q. Didn't he tell you Cyrus Graves during his lifetime had made a conveyance to Abram Graves to one of these lots?

Mr. ERWIN: All that we object to on the same ground as incompetent.

A. Yes; he told me that. He showed me no evidence of any such thing, though, except his statement about it.

Q. Do you know the circumstances attending the division of property between Cyrus Graves and Abram Graves? A. No, sir.

Q. You don't know, as a matter of fact, that when Cyrus Graves came to this State that there was a contract between him and his father, Abram Graves, by which—— A. I never heard of it until I heard of it through Thomson.

Q. You don't know whether it is true or not? A. I should rather think it was a mistake.

Q. That is your opinion about it. Anyway you never heard of any claim to this lot 353, and when you made the deed to your
315 daughters you did not include that in your conveyance? A. It seems it was not conveyed. I supposed it was.

Q. And when your taxes were returned, so far as you know, you do not know what lots were returned? A. I think we generally gave them in in block.

Q. Did you ever return them yourself? A. I don't know whether I did or not.

Q. In your affidavit you use this expression, that insofar as he (speaking about William McMullen) rendered any "because she had no interest in the land since 1889." That you had no interest in any of these lots? A. That was when I made this conveyance.

Q. Will you look at this Exhibit No. 3 and state who wrote the probate signed by Samuel L. Moore? A. Colonel MacIntyre.

Q. Will you notice the date of that probate? A. It is March 30, 1889.

Q. Will you notice this deed from yourself to your two daughters conveying these five lots of land, the date of that deed? A. I think they were made on the same day.

Q. Wasn't it a matter of fact, Mrs. Graves, at the time that this conveyance from yourself to your two daughters was made that you had that original deed there before you? A. I think so. I think that they were. I know that they were with Col. MacIntyre and he made both of these papers.

Q. Made them at the same date? A. I think so. I do not see the date on this, but as I remember they were made at the same time.

Q. Look at it and see if it is not the same date as the probate?

Mr. ERWIN: That is admitted to be correct, that the second probate on the Joel Graves deed corresponds in date with the deed made by Mrs. Graves to her daughters.

Q. When was the first time you remember to have read over this deed from Joel S. Graves to Cyrus Graves conveying six lots of land? A. I think it was read about the time that this transfer was made.

Q. Read by yourself? A. Yes, sir; and I think it was read to me by Col. MacIntyre when we were consulting and he was advising me to make this transfer to my daughters.

Q. The deed had been in your possession? A. It had been with Mr. Thomson.

Q. E. O. Thomson? A. Yes, sir.

316 Q. He had been your agent down there? A. Yes, sir.

Q. You got the deed from E. O. Thomson and carried it to Col. MacIntyre? A. I think Mr. Thomson delivered it to Col. MacIntyre.

Q. Did you examine the deed at that time? A. It was read to me; yes, I think I examined it.

Q. You knew the lots of land you owned, did you not, claiming at that time. A. Yes; I knew that there was about 3,000 acres, but I never thought of them separately or collectively. I thought of them as in bulk.

Q. Didn't you think you owned six lots of land up there? A. Well, no; I used to think of it as the Colquitt land.

Q. Didn't you think of it, that you owned six lots of land up there

in the county. A. No; I did not use to think of it in that way, but I knew I did.

Q. Owned six lots, claimed six lots? A. Yes.

Q. When you made this deed to your daughters, you did not think of it? A. I did think of it. I had that paper. Col. MacIntyre advised that I should transfer to my daughters my interest, for he said it would be better to have things in that way, and he said I will make the deed or transfer, whatever this may be, and he made it, and I, with full confidence that it was all right, I placed my name to it.

Q. Didn't you read over that deed before you signed it? A. I do not know that I did.

Q. You could have read it over? A. Certainly I could. I do not think, I could not say that I did, because I supposed it was all right.

Q. You generally before you sign a paper conveying five or six lots, two or three thousand acres of land, examine it, do you not? A. I was making the conveyance under advisement that it was best, and it was to my own daughters, and I do not think I read it.

Q. In a transaction of two or three thousand acres of land you mean you did not read the deed? A. I don't think I did. If I read it I did not discover what the transfer covered.

Q. And you did not examine the title from Joel Graves to yourself? A. I don't think I did, not as respective to this transfer.

Q. You made no comparison as to whether you were conveying your lands or somebody else's, you left that entirely altogether to Col. MacIntyre? A. I left it to him. He advised me to do it. He made the paper and I signed it.

Q. You never saw that interlineation on this deed from
317 Joel Graves to Cyrus Graves, sold to Dr. Bower, until Mr. Erwin called your attention to it. A. No, sir.

Q. And it may have been made there by Cyrus Graves, so far as you know? A. No, it is not my husband's handwriting.

Q. It may have been made by E. O. Thompson? A. Well, I cannot say who it may have been made by.

Q. The deed has been in your possession or in the possession of your agents all the while, has it not? A. It has been with Mr. Erwin.

Q. Where did you get the deed first? A. My husband left it with me at the time of his death.

Q. It has been in your possession or in the possession of your agents and attorneys ever since? A. I left it with Mr. Thomson.

Q. He was your agent? A. When I went North, with money to pay taxes on the land.

Q. He was your agent, representative? A. Yes, might be so considered.

Q. After then it went to the possession of Col. MacIntyre? A. Yes.

Q. He was your attorney and agent? A. Yes.

Q. After then it went into the possession of Mr. Erwin, your attorney in this proceeding? A. Yes, sir.

Q. And you never noticed that interlineation until it got into Mr. Erwin's hands? A. No.

Q. Mr. E. O. Thomson did represent you in returning these lands for taxes before Mr. William McMullen represented you? A. I think he did return them.

Q. If, as a matter of fact, it was necessary for Mr. William McMullen, your agent, to go to Thomasville to defend said lot 384, $10 would be a reasonable compensation for it? A. I am unable to say.

Q. How much did it cost you to go from Moultrie to Thomasville? A. I do not remember.

Q. Can you guess? A. No, I could not guess correctly.

Q. Do you know how far it is? A. I think it is about 24 or 27 miles.

Q. You did hire a conveyance, you alleged in your bill and state on your direct examination? A. Yes.

Q. Do you remember what you paid for it? A. No, sir; I don't remember what I paid for it.

Q. Did you ever hire a conveyance in Moultrie or Thomasville when you were here last? A. I did.

Q. Do you remember about what a conveyance from Moultrie to Thomasville would cost you? A. I never asked for one for that trip.

318 Q. You have no idea what a reasonable expense would be for a person going from Moultrie to Thomasville? A. No, sir; I do not know what even a liveryman might ask.

Q. If it was necessary for Mr. McMullen in the proper defense of your case in Court to get a certified copy of a deed and pay the clerk $1.50, you think that ought to be paid back, don't you? A. I am not sure I should have paid him if he had sent to me for it.

Q. What about it not, if you have become in possession of that information now? A. I am not certain but what he is in my debt.

Q. Do you know when Mr. William McMullen surrendered his, or when he says he surrendered his trust and representing you, to Col. McIntyre or anybody else? A. No; I do not know just when.

Q. About when? A. I cannot say.

Q. Have you had any trouble about your taxes since William McMullen stopped representing you? A. I might be considered troubled. I had trouble while he represented me, during those years he claimed to represent me, I paid double taxes.

Q. How many times did you ever pay double taxes? A. I think I did.

Q. Are you certain of that? A. Yes, sir.

Q. Are you positive that you were double taxed during the years Mr. McMullen represented you and paid it? A. I think so.

Q. You are not positive? A. I think that we were double taxed and that we sent on the money.

Q. You do know you have been double taxed since he stopped representing you? A. Yes, sir.

Q. Do you know that your land was levied on *nor* for its taxes? A. No, sir; I don't know it.

Q. Have you paid your taxes this year? A. No, sir.

Q. Do you know when the time for paying taxes was out? A. No, sir.

Q. You think it is necessary, wouldn't it be, don't you think it is necessary to have some local agent to represent your interest if you can get an honest man? A. If I can get an honest man I will employ him.

Q. You think it would be advisable, necessary? A. I think it would be advisable.

Q. Then you are in search of an honest man in that county? A. I am not certain that I would make the attempt.

Q. If they will submit sufficient proof to you that there is an honest man in Colquitt County you will take up the question
319 of his employment? A. I do not think he would want to meddle with land matters up there.

By Mr. HANSELL:

Q. The notification you got to come down and see about that levy in December, 1898, came through Col. MacIntyre, or from him? A. Yes, sir.

Q. In December, 1898, the latter part of December, you received notice from Col. MacIntyre to come down and keep the land from being sold? A. Yes.

Q. It was from Col. MacIntyre you got the notice? A. Yes, sir.

Redirect examination:

Q. Mr. Pearsall asked you if Mr. McMullen had reported to you the trespasses committed on these lands, and you stated to him yes. I will ask you now whether Mr. McMullen reported to you the boxing of lot 383 in the 8th District by Mr. Crawford? A. No, sir; he reported to me about Mr. Norman and Mr. Autrey.

Q. That was in the earlier stages of his representing you? A. Yes, sir.

Q. But the trespasses you found going on on lot 383. Now, Mr. McMullen never reported anything about that at all. You went there yourself? A. No, sir.

Q. And you found it had been going on some time? A. Yes, I think for about a month, on lot 383.

Q. The record in here shows that there had been a levy by Mr. McMullen himself of lot 354 in June, 1898. Did he make any report to you of his intention to levy on that lot 354 or of his having levied on lot 354. A. No, sir.

Q. Did he make any report to you as to his intended sale of that lot? A. No, sir.

Q. The first notice you ever got was that copy of the notice of sale Col. MacIntyre sent you? A. Yes, sir. And that was some time in December.

Q. Did Col. MacIntyre report to you anything about trespasses on lot 383? A. No, sir.

Q. You did not find that out until you found it out yourself? A. I found that out when I got to Moultrie.

Q. When you got to Moultrie Mr. McMullen told you Col. MacIntyre had sold off 383? A. Yes, sir.

Q. And Col. MacIntyre had told you that McMullen had levied on 354? A. Yes.

320 Q. Now, about this conversation that you had with Mr. E. O. Thomson, adm. Abram Graves, the conversation you stated you had about two or three years ago, *thatsinhe* [that is in the] latter part of '98 or first of '99, that was the time? A. Yes.

Q. At that time were you and Mr. Thomson on good terms? A. Not especially.

Q. Was or was not there bad feeling growing out of the settlement of Abram Graves' estate? A. He was afraid of my claiming something for my daughters.

Q. You can answer the question whether or not there was in the settlement of that estate some ill feeling? A. Certainly there was.

Q. Did Mr. McMullen ever tell you that he had, or write you in any communication which you received, that he had looked after your interest there in regard to trespasses? A. No, sir. I think he wrote me that he was tired; that he had done no good, that he had done the best he could, that he had done no good; I think I have a letter to that effect.

Q. That is the letter that was read this evening? A. No.

Q. I do not want to go into any letters you do not produce. After you dismissed the suit in the Superior Court of Colquitt County against D. H. Autrey and employed me, state whether or not there was a compromise made with Mr. Autrey? A. Yes.

Q. And a part of that compromise was the payment to you of certain money? A. Yes, sir.

Q. And a quit claim of any interest in lot of land 384? A. Yes, sir.

Q. That was the deed? A. Yes, sir.

Q. To Ida J. and Minnie C. Graves? A. Yes, sir.

Mr. ERWIN: I offer in evidence this quit claim deed from D. A. Autrey to Ida J. and Minnie C. Graves, dated April 1, 1899.

Exhibit No. 46.

U. S. Court Room.

MACON, GA., *January* 4, 1902.

Present: Mr. Erwin, Mr. Callaway, Mr. Hill, Mr. Pearsall, Mr. Hansell.

Examination of JENNIE L. GRAVES continued:

321 Cross-examination.

By Mr. PEARSALL:

Q. I believe you stated that there was some feeling between your family and Mr. E. O. Thomson about the settlement of Mr. Abram Graves' estate? A. Yes, sir.

Q. You were an heir or claimed to be entitled to an interest in the estate of Abram Graves? A. Yes, sir.

Q. You made a settlement with Mr. E. O. Thompson as administrator of the estate of Abram Graves? A. I had never made any settlement with him when I went down there and he presumed that that was our errand. He felt very antagonistic against us, because while my sister lived or my husband's sister, I had never made any demands at all, for she had nothing more than what she needed.

Q. After her death you did make demand on Mr. Thomson. A. I did.

Q. Did he pay you anything? A. Well, he made what he termed a peace offering, I believe. He gave us a little more Georgia land.

Q. Did he pay you any money? A. No, sir.

Q. Made you a conveyance to some land? A. Yes, sir.

Q. You gave a receipt in full? A. I do not know how about that receipt. I am unable to say. He drew up some kind of paper. I should be unable to say what that may have covered.

Q. That was the settlement of the Abram Graves estate? A. He made that as a peace offering, whether that concluded the matter or not I am unable to say.

Q. Now, Mrs. Graves, if part of the money that you received from Mr. E. O. Thomson as administrator of the estate of Abram Graves was from the sale of this lot 353, if in fact he sold that land as the estate of Abram Graves, you received part of it?

Mr. Erwin: I object to that, on the ground the witness has testified she did not receive any money from that estate at all, but merely that she had received a certain conveyance of lands of that estate.

Q. You say you received some land from Mr. E. O. Thomson? A. I think he made the deed to my daughters.

Q. Do you know to what lands he made it? A. Well, I could not describe them.

Q. You paid him no money for this conveyance? A. No, sir.

322 Q. It was made in settlement of your claim on the estate of Abram Graves? A. No; I do not think he claimed it in that way.

Q. How did you receive it? A. He made that as he said that was his own personal business.

Q. Made you a present or your daughters a present of some amount? A. That is the way he interpreted it.

Q. Don't you know, as matter of fact, it was made in extinguishment of your claim on the estate of Abram Graves? A. I cannot really say it was because he said if you let this matter drop now, he says perhaps in future time I will be able to do something for you, and he gave us a description of some patents. He said when his wife died he was left destitute, and he had little or nothing for himself, except this land, and you may know the value of it, we paid 67 cents this year taxes on it.

Q. That is not as valuable as your Colquitt County lands? A. Well, I should think not.

Q. Do you mean to say that lands in Colquitt County, where there are no honest people, are so much more valuable than land in

Thomas County? A. You are speaking of some specific land. I do not know about this place, but I know we sent on our taxes this year, we sent a dollar. There was an honest man in Thomas County and he returned to us in stamps the difference between that and the taxes.

Q. Didn't you stop at Mr. E. O. Thomson's house through one winter when you were in Thomasville? A. I stopped there a portion of a winter.

Q. Was that before there was any feeling between you and Mr. Thomson, of which you spoke? A. I cannot say what the feeling might have been at that time. I think that he has always since he has been in the family been a little grasping, and he, of course, did not know what might be my errand there at that time.

Q. But whatever might have been your errand, you went to his house? A. Yes, sir.

Q. Lived there under the shelter of his roof? A. Yes, I told you.

Q. Received the hospitality of his home? A. I went there. His wife and daughter had been to my house and spent the summer and we were very hard pressed by her to come down. My daughters had never been back to Georgia and she insisted that we should come and spend the winter with her, she and her mother. I took my mother-in-law and kept her two years in my own home.

323 She felt that we should go and that my daughters should enjoy and know a little of the South. So we went there. I can say now whatever the feeling may have been, we were very coldly received by all except by Mrs. Thomson. The daughters packed up the second day after we arrived and went to Savannah, and they were gone a number of weeks, and my daughter had been to the trouble when her aunty one season before had come North to spend her time with us and stayed late in November; she went to New York and met her and paid all her own expenses, took her aunty, who was very deaf, in charge and in that we did for her the best we could. When we got to Thomasville that is the way we were treated. I got sick. I went to a boarding house. I thought it was the easiest way out of it. Mr. Thomson made no complaints to me, but he did complain to my daughters and wanted them to sign off unbeknowingst to their mother. Of course, he knew if the matter came before me that I might not advise it. That is the condition the best I can relate it.

Q. Do you remember how long you stayed at Mr. Thomson's house? A. No, sir; I could not say.

Q. You stayed there after this cold reception of which you speak? A. Yes; I did on account of Mrs. Thomson; she was a very beautiful woman. It might be proper to say that Mr. Thomson and his brother had shared my hospitality *two* [too] by going North and spending perhaps a month at my country home.

Q. Honors are even between you and Mr. Thomson on the question of entertaining each other? Now Mrs. Graves, we are back to where we started. I wish to know if, as matter of fact, you or your daughters have not received from Mr. E. O. Thomson land or money or its

equivalent from the estate of Abram Graves, any consideration, money or land? A. I only received that land, and I think if you had that paper you would find that he incorporated in that, it was a peace offering on his own part. And I think it has a promise in it. Now, I am not certain—this is what he talked—if he should ever have property he would make that thing right with us.

Q. Did he give you title to certain lands in Thomas County? A. He gave us, I think that was made to my daughters.

Q. To some of you? A. Yes, sir.

Q. The peace offering you refer to relates to the estate of Abram Graves? A. Well, I don't know. I am unable to explain that.

Q. Does the peace offering refer to the mutual hospitalities of your homes or to the estate of Abram Graves. A. I cannot say.

324 He drew up the paper. I could not say what it is relative to. It was a peculiar production. The easiest way out of it. We let it go that way.

Q. I will ask you if you did not go down there and make demand on Mr. Thomson, demanding that he pay your part and your daughters' part of the estate of Abram Graves? A. We did make that statement.

Q. Did he not, in compliance with that demand, or in settlement of that demand, make you a title to this land in Thomas County? A. Now, Mr. Thomson said that everything that belonged to Abram Graves had passed out of his hands and he was not able to have any control in the estate at all.

Q. Didn't he at that time tell you this lot 383 in the 8th District had passed out of the estate of Abram Graves and this was the money you were demanding that he pay you and your daughters? A. I don't think he did.

Q. But at any rate Mr. Thomson did make you a conveyance to certain lands? A. He made us a deed.

Q. And you will not say. You do not remember now whether that was from the estate of Abram Graves or from—— A. I say he said that was his own personal property, that he was taking nothing from the estate, from his children, that that was what was his own.

Q. Mrs. Graves, do I understand you to say that with ill feeling existing between you and Mr. E. O. Thomson, he treating you coldly at his own house? A. Yes, sir.

Q. That he would turn around, voluntarily, without any consideration, and make you and your daughters, or your daughters, a conveyance to certain land without any consideration whatever? A. Well, I am not accountable for what he did.

Q. Isn't it at least remarkable that a man who would not treat you hospitably in your own home, and whom you state had ill feelings against you, would, without any consideration, make you a conveyance to certain lands? Isn't that rather remarkable, you think? A. It does not strike me so. You know he has a little sense of right.

Q. Originating from what? A. From the indulgence that he has had in the way of having everything that had belonged to the Abram Graves estate. And he knew that I had——

Q. Some demand on the estate of Abram Graves? A. No; he knew I had treated him so kindly. He made that as a peace offering on his own part. Sorry I could not show you what he presented us.

325 Q. That peace offering, does it refer to your entertaining him or his wife? A. I cannot tell.

Q. You don't know what the peace offering was for? A. He made that paper. He drew it up, brought it to us; said it was his own property that he was giving to us, and there was an abundance of the Graves property in existence.

Q. You received that as a peace offering? A. I did.

Q. And you still say Mr. Thomson is not an honest man? A. I think I did not say it. I do not want to say it about Mr. Thomson. He has not treated me well.

Q. Do you think it is consistent to receive a peace offering and then not extend to the giver the peace for which it was given?

A. I object to that on the ground that there is no evidence that Mrs. Graves had not extended to Mr. Thomson any peace. There is no evidence she has sued him. There is no evidence that she has attacked him, and counsel make in his question statements of facts not warranted by the evidence.

Mr. PEARSALL: I would like to know, and am still trying to find out, something about this peace offering. It seems to be very indefinite.

Q. Will you say you have never received from Mr. E. O. Thomson any consideration for your claim on the estate of Abram Graves? A. I never received any portion of Abram Graves' property, any property that belonged to Abram Graves. I received from the administrator, why he gave it I don't know. He came up and made us that proposition, that as a personal matter, not as administrator.

Q. I understand you to say it was as administrator you received it? A. Oh no, sir; I said it was personal.

Q. You received it from Mr. E. O. Thomson as a personal gift? A. I think that is the way he has incorporated it.

Q. But you make demand upon him not as an individual, but as administrator, did you not? A. I did.

Q. The demand you made upon him was to settle your claim against the estate of Abram Graves? A. Yes, sir.

Q. And instead of making a settlement, now you say that it made it as an individual and not as administrator? A. That is what I said. That is my understanding of it.

Q. Isn't that a little remarkable Mrs. Graves that he would not settle as administrator but settled as a person against whom
326 you had ill-feeling and whom you say entertained ill-feelings against you? A. Well, I am unable to explain his dealings.

Q. Will you deny that you have never received anything from the estate of Abram Graves through Mr. E. O. Thomson as administrator? A. It is my understanding that that was a personal matter with Mr. Thomson.

Q. If as a matter of fact this peace offering to which you refer was

made as administrator and not as an individual? A. He claimed that he was not administrator any longer, that the estate was all. That he did not represent the estate, that it had been such a lapse of time that he was not an administrator any longer. I think he said he had been so advised, that he could not act as administrator, he could not take anything from his children to give to mine, and that all of the property except some little things that he had got out of his own salary belonged to them, and he said everything first went to his wife, and had been willed to his children and he says I cannot take from my children and give to yours, was his explanation of not acting as administrator.

Q. The fact is he did take something from somebody and give to you? A. His own.

Q. And you have that now or your children have it? A. Yes, sir.

Q. You gave him nothing for it unless it was your interest in the estate of Abram Graves? A. He came up with that proposition, with the deed I think, with the conveyance to my daughters, and said that that was on his own part.

Q. And you accepted it? A. Yes, sir; I was quite unable to understand Mr. Thomson.

Q. The ill-feelings which you say exist between you and Mr. E. O. Thomson originated from what cause? A. I think largely sir for the reason my daughters did not sign that paper. I don't think he prepared it. But very soon after their arrival he called my daughters aside and says now girls I want you to make a sort of conveyance to me. I do not know that he explained what it was fully, but he explained it in this way. He says now you have got Colquitt County land, and they said of course their father left them some land, but they said they would not sign any papers without their mother's knowledge, and he seemed to be confounded.

Q. But I understand that that was a matter that came up some days, some weeks after you had been there? A. No, sir; I think he asked that of my daughters a very few days after our arrival.

Q. You stated previously that your cold reception began
327 on the day you arrived there? A. Yes, it was but you asked me for a reason for it. Of course I could not explain why at the time of our arrival.

Q. Isn't is your opinion that this feeling which you state exists, existed because of your demand upon him as administrator of the estate of Abram Graves? A. I made no demand that winter.

Q. You made no demand that winter? A. No, sir.

Q. When did you make the demand. A. When I was down here in '98. Not while my sister lived. I never asked for anything.

Q. I understand that this peace offering was made to you in '98 wasn't it? A. Yes, sir; but then in '98 I did not go to his house.

A. [Q.] In '89 the peace offering was made? A. Oh no, sir; in spring of '99, the last time '99.

Q. You did not go to his house the last trip you were there? A. I merely called there.

Q. For what purpose did you call? A. I made a friendly call.

Q. In connection with that friendly call, I will ask whether or not you called on him to settle your claims against Abram Graves? A. I do not know whether it was mentioned in my friendly call or not.

Q. It was mentioned however during your stay in Thomasville this last time? A. Yes, sir.

Q. When was the deed made by Mr. Thomson to your daughters? A. I cannot give the date but it was in 1900. In the spring of 1900.

Mr. ERWIN: 1900?

A. It was the last time we were down here, '99. I get those dates mixed.

Q. You cannot remember now whether that offer which you call a peace offering was not made in extinguishment of your demand against the estate of Abram Graves? A. It was not conclusive I think.

Q. It was not conclusive? A. I think not.

Q. It was made as a matter of fact as part payment of your demand upon the estate of Abram Graves? A. He said he had no right to convey to us as administrator for he spoke of bondsmen. He said everything on that line was all dissolved.

Q. Answer the pointed question, as to whether or not you
328 did not receive that peace offering as a payment on your demand upon the estate of Abram Graves? A. I took that peace offering with a promise that Mr. Thomson would make everything right with us if he should ever have the property to do so on his own account, that he could do nothing as administrator.

Q. But it was, as a matter of fact, relative to the Abram Graves estate? A. I said I could not understand Mr. Thomson, what it was relative to. He made it as his own personal matter, the way he explained it to us.

Q. Did you make a demand upon personally or as the representative of Abram Graves estate? A. I think I said to him, this way, I says, now Mr. Thomson, your wife is gone and there was quite a little property belonging to Abram Graves, and I said could you do something for my daughters in their grandfather's estate?

Q. And he made this offer? A. And he told me, said he, that thing, he had an expression for it, that thing had all lapsed I think he called it.

Q. He told you he had sold all the property of Abram Graves' estate as administrator, did he not? A. I do not think he did.

Q. Didn't he tell you he had sold lot 363 in the 8th district as property? A. He did not tell me what lot he sold.

Q. Didn't he tell you he had sold one of the six lots. A. He claimed that he had sold a lot of land up there.

Q. One of these six lots? A. He did not say. He said that he had sold a lot. I asked him Mr. Thomson which do you claim to have sold? He was unable to tell me.

Q. But he did tell you it was one of these six lots which you are now claiming? A. He claimed he was unable to specify.

Q. I understand he was unable to tell you the number, but he did identify it as one of the six lots in Colquitt County? A. I do not know that you could call it identification from his statement.

Q. But he did state it was one of those six lots, did he not? A. Well, I don't know, he said he had sold a lot of land up there without giving any number or any specific description. I could not say that he really told me what lot he had sold.

Q. I understand he did not tell you what the number of the lot was but he did, did he not, tell you that it was one of these six lots which Joel Graves had conveyed? A. He said nothing about six lots. He told me he had sold a lot of land up there, but I do not remember that he said it was one of the six.

329 Q. Didn't he try to leave the impression? Don't you know that it was his opinion that he had sold one of these six lots which you are now claiming? A. I cannot say any better than to say he told me had sold a lot of land up there.

Q. I will ask you if he did not tell you it was one of these lots which you are claiming, one of these Cyrus Graves lots? A. Yes, sir; he may have said that. He says, I sold a lot of land up there in Colquitt County. I says which one did you sell, what did you sell. He said I don't know.

Q. After he told you it was one of these Cyrus Graves lots you made demand upon him as administrator to pay you your part of it? A. I made it long before.

Q. Didn't you make it after he had told you he had sold one of these six lots? A. No, I made demand before this.

Q. And you received this conveyance to your daughters as payment upon or in satisfaction of that demand? A. No, sir; not as satisfaction.

Q. But as part payment? A. I cannot say. Mr. Thomson begged off. He begged off with a great promise that he hoped through something he would be able to do something for us, but that we were entitled to it.

Q. If he had sold this lot 353 as the estate of Abram Graves as a matter of fact you would be entitled to it? A. No, no; he did not refer to this lot.

Q. I mean as a matter of fact if he did sell this lot 353 you would be entitled to the proceeds? A. I do not know. I do not understand estate matters.

Q. You plead your ignorance of law in answer to that question? A. I do, most——

Mr. ERWIN: I offer in evidence a letter of March 17, 1898, from W. W. Ashburn to Mrs. Jennie L. Graves, Cortland, N. Y.

Exhibit No. 47.

Also a letter from W. W. Ashburn, of March 7, 1899, to Mrs. J. L. Graves, Mitchell House, Thomasville.

Exhibit No. 48.

Mr. PEARSALL: I will admit she received it, and that is Mr. Ashburn's signature. I object to it on the ground that it is irrelevant, immaterial, and that there is no land designated in the letter to show that it was in reference to any adverse claim of Mr. Ashburn.

I object to Exhibit No. 48, as it appears from the pleading
330 that Mrs. J. L. Graves claimed to have no interest in the lot involved, and it is immaterial, for the reasons assigned as to the other lot. Same admission as to the signature.

Mr. ERWIN: I announce closed in this case, subject to offering a certificate. I will put it in in rebuttal without delaying the proceedings, if you put up any testimony, as soon as I can get it here. The certificate from the clerk's office of Chatham County, Georgia, as to the notaries public commissions issued there in the name of W. T. Thomson.

Mr. PEARSALL: We will admit any certificate from the clerk's office of the Superior Court of Chatham County as to W. T. Thompson being or not being commissioned as a notary public during the time covered by the deed, however, the question of execution of the deed to which W. T. Thompson's name appears as notary public, that will be subject however to an objection as to its relevancy in this case.

Mr. ERWIN: Yes.

Examined by Mr. ERWIN:

Q. Do you remember the Spencer Graves letter you referred to? A. Yes, sir.

Q. Look at that and identify that letter as received by your daughter from Spencer Graves in '89. Is that the letter to which you referred in your testimony this morning? A. Yes, sir.

Mr. ERWIN: I offer this letter from Spencer Graves to Miss Minnie Graves, dated Adel, Berrien County, May 2, 1899.

Exhibit No. —.

Examined by Mr. PEARSALL:

Q. Did you ever receive any other letter from Spencer Graves connected with this correspondence? A. I think I have one other letter. I have not read this through fully. I may have had another letter from him, but I am not certain.

Q. Did you probably answer that letter? A. This letter is to my daughter, and I have not read it through.

Q. I will read this part of it. I will try to see if you are
331 correct about 353. Do you know what you referred to about that? A. No, sir.

Q. So far as you remember or know the correspondence stopped at that time? A. I do not remember what I referred to. That was my daughter's letter.

It is agreed between counsel for complainants and counsel for defendants in the H. T. Crawford *et al.* case, that the order fixing the time to take testimony shall be considered as extended to the testimony already taken and also to be taken by the defense within a reasonable time from this date, to be fixed by agreement of counsel or hereafter by order of the Court.

COUNTY COURT HOUSE,
MOULTRIE, GA., *March* 6, 1903.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Present: Marion Erwin and M. P. Callaway for the complainants.
Matt J. Pearsall and C. J. Shipp for H. T. Crawford.
Pope S. Hill and J. T. Wilkes for Union Lumber Co.
C. P. Hensell for Admx. Estate A. T. MacIntyre, Sr.

For defendant:

CHARLES P. HANSELL, called for respondents, duly sworn, testified:

Mr. PEARSALL:

Q. Where do you live. A. Thomasville.
Q. How long have you resided there? A. About fifty years, I reckon, a little over.
Q. What is your profession? A. Attorney at law.
Q. Did you know A. T. MacIntyre, Sr., and his son, A. T. MacIntyre, Jr.? A. Yes, sir.
Q. And Mr. E. O. Thomson? A. Yes, sir.
Q. When did E. O. Thomson die? A. A little over a year ago. I do not remember the exact date.
Q. About a year ago sometime? A. A little over a year. I think it was probably in December, 1901, he was killed.
332 Q. He was killed? A. Killed by a train or car at a crossing.
Q. Are you familiar with the handwriting of A. T. MacIntyre, Sr., A. T. MacIntyre, Jr., and E. O. Thomson? A. Yes, sir.
Q. Will you examine this deed, marked Exhibit 3, purporting to be a deed from Joel S. Graves to Cyrus S. Graves, and you will find in a different colored ink opposite lot 353— What do you find written there? A. "Sold to Dr. Bower."
Q. Is that the handwriting of A. T. McIntyre, Sr., or A. T. MacIntyre, Jr.? A. No, sir.
Q. Whose handwriting is it?

Mr. ERWIN: I object to the question now asked on the ground that he has not qualified himself to speak as to the handwriting of the unknown person that counsel has asked him about, whether he knows the handwriting of the person who did the writing or anything that would enable him to speak.

Q. Are you familiar with the handwriting of E. O. Thomson? A. Yes, sir.
Q. Tell if that is the handwriting of E. O. Thomson, that interlineation there "Sold to Dr. Bower?" A. To the best of my judgment it is his handwriting. It is in such a small quantity I cannot be as certain about it as I would be if it was more, but the "Dr. Bower" part of it is in my judgment strictly his handwriting.

Q. Do you know whether Mr. E. O. Thomson represented the complainants about their lands in this county?

Mr. ERWIN: I object to that on the ground that the time of the alleged representation is not stated and on the ground that E. O. Thomson was a witness on the part of the said defendants himself while in life and fully examined, and the question asks for a conclusion from the witness rather than for facts, and it is for that reason incompetent. The question should be confined to what acts he knows the said Thomson did for the complainants, and from the facts the Court might infer that he represented them, rather than for the conclusion.

Q. You can tell if you know of your personal knowledge what acts he did if any and when? A. I do not know of anything that I can recall now that he did as representing the estate of
333 Cyrus Graves. I d know acts he did as representing the estate of Abram Graves, father of Cyrus. I advised with his as an attorney as to certain things connected with the management of the estate of Abram Graves, and all I know about his connection with these folks is the fact that as representing the estate of Abram Graves he looked after some lands up here in this county.

Q. Do you remember the date of that, Captain? A. I think Abram Graves died in '66 or '67, and it was following that pretty closely, with about the usual time it would take to qualify after his death and get into control of the estate, that he came to me with a lot of papers, notes and things.

Mr. ERWIN: I object to going into any of this testimony in regard to what Thomson as administrator of Abram Graves did, for the reason that any statements made by the said Thomson as administrator of the estate of Abram Graves cannot be binding on these complainants whose title to the lands in question was in Cyrus Graves antecedent to the death of Abram Graves and that if such statements were made between counsel and client, that is between the administrator of Abram Graves and his counsel that they are privileged communications and are incompetent. And further that the declarations of a party setting up a hostile title to the complainants here is not admissible if it is sought as it seems to be, to show that the administrator of Abram Graves has made declaration any time that he sold these lots as such administrator of Abram Graves to the parties under whom any of these defendants hold, all such evidence being inadmissible as *res inter alios acta*, hearsay, incompetent and immaterial.

Q. Do you know anything of a settlement or terms of settlement made by E. O. Thomson, administrator Abram Graves, with these complainants or either one of them? A. I only know what Mr. Thomson told me in connection with a paper he showed me from them, signed by them.

Mr. ERWIN: I object to any testimony as to what Mr. Thomson told him because it is hearsay evidence, and because Mr. Thomson was a witness before he died to all the transactions in question and

fully testified in respect thereto, and because it is a communication between counsel and client, and that if anything was stated in connected with a writing, paper or document, the writing, paper
334 or document is the best evidence of its contents, a part of a conversation relative thereto cannot be put in without such document.

Mr. PEARSALL: I desire to state in connection with this that it is in rebuttal to the testimony of the complainants taken at Macon, and that Mr. E. O. Thomson's death occurred soon after the taking of this testimony.

A. I would like to state I was attorney for Mr. Thomson, administrator for Abram Graves somewhere between 1860 and 1870. Since then I have not been his attorney at all in connection with that. I was not his attorney any more. It was a matter of friendly conversation between me and him after that. After these suits were filed I was not his attorney at all.

Mr. ERWIN: The conversation occurred after these suits were filed? A. Yes, after he made the last settlement with them I think. That was after the suit was filed. I am pretty sure it was.

Mr. ERWIN: I object to the testimony on that line for the additional reason that it is hearsay evidence from a party hostile to the complainants interest made after the suit was filed.

Q. What was the conversation about the settlement you say that was made between E. O. Thomson, administrator of Abram Graves, and Mrs. Jennie L. Graves? A. He stated to me that they were bothering him again, he did not owe them a cent, in fact they ought to have owed his wife, but that he had given them this land to get rid of them, that the only thing he had was about 100 acres of land left up there and he made them a title to that to settle the whole business and make them let him alone.

Mr. ERWIN: You do not mean this land in controversy in this suit?

A. Oh no.

Mr. ERWIN: Of course I object to the testimony for the reason above stated.

335 Q. Do you know what paper was the official organ of Colquitt County from 1867 say up to 1875, in which the sheriff's advertisements, the Ordinary's Court, the administrator's advertisements were placed? A. Pretty hard to say that far back. But the Southern Enterprise, owned by L. C. Bryan and edited by him, was about the only newspaper in all this section of the country from soon after the close of the war—as soon as he could get it running—until the Times was established in March, 1873. Soon after the Times began to be published in 1873 it became and was until after they got a paper running here, the organ of Colquitt County.

Q. Do you know where the files of the Southern Enterprise are. And do you know of any effort that has been made on the part of

yourself and myself to try to find those old files of those papers, and whether they are in existence or not? A. I know that in '76, the fall or '75, when I bought out the Southern Enterprise, I tried to get those old files, and then Major L. C. Bryan said he had them. He left Thomasville not long after that, lived in Savannah a while, and I suppose it is safe to say he had them, although I do not know it of my own knowledge. He died there some years ago. Mr. Castain, who was with Major Bryan in editing the paper, a partner I believe, I cannot state that positively, came with the paper to myself and partner who bought it out. I tried to get the files from him, thinking he had them. He did not have them, could not give them to me. I tried afterwards while I was there in charge of that paper for seven years, but could never succeed in finding them. Major Bryan was gone, and correspondence was had with him. They were not bound, is my recollection, and he could not get them in shape.

Q. Then so far as you know and from the effort you have made, those old papers are not in existence? A. No, sir.

Q. Do you know of any effort you made recently to try to find those papers in Thomasville sometime ago? A. Well, I went to Capt. Triplett thinking possibly that he might have them, his paper having absorbed the other paper. After a while the two became one, the Times-Enterprise. I inquired of him, he did not have them, and I again inquired of Mr. Chastain, who was connected with the paper under Mr. Bryan from '67 up to the time I bought it, and with it from that time, 15 years or more after that. I do not know of any further effort in that direction.

Q. The early editions of the Times-Enterprise which succeeded the Southern Enterprise, what became of them? A. I do not know. I was under the impression that Capt. Triplett still had the early editions of the Times. I did not inquire about them.

336

Q. Do you know anything about a fire that happened in the office of the paper down there somewhere in the '70s? A. Well, I was away from home when that occurred. I don't remember whether it was '76 or '78. There was a fire right underneath Capt. Triplett's office, which was in the second story.

Q. Have you ever made an examination of the office of Ordinary or clerk of the Superior Court or sheriff of your own county to find out whether those old papers were on file in the office there, and how far back they go? A. I cannot say that I have with any connection to this case. I inquired there a good many years ago about those older files in a case from Brooks involving a question of advertising and they did not have them then. After that I just sort of took it for granted that they did not get them. I kept them myself as far as I could of late years.

MAT J. PEARSALL, called for the defendants, duly sworn testified:

A. I just simply wish to carry out the testimony of Capt. Hansell, that I made an examination in the ordinary's office, clerk's office, and sheriff's office in Thomas County to find the files of the official

organ of Colquitt County, about the years from 1870 to 1875, and they could not be found. I could not find them and that was the information I had from the officers in charge that they did not have the old files of the paper of that date.

Mr. PEARSALL: I tender an order from the Court of Ordinary authorizing E. O. Thompson, administrator of the estate of Arbam Graves, to sell real estate of the deceased upon giving notice as required by law, marked Exhibit No. 52.

Mr. ERWIN: I object to this order as being irrelevant as relating to real estate of Abraham Graves, and it being not supported by any evidence as to what real estate Abraham Graves had, and also because the certificate is not properly stamped with Internal Revenue stamps.

337 Mr. PEARSALL: I tender a certified copy of the return of E. O. Thompson, administrator of the estate of Abram Graves, from July 4th, 1870, to July 4th, 1871, especially this item to the amount received from the sale of wild land in Colquitt County, being the first payment and one-half the purchase money $37.50. Together with an order of the Ordinary on it.

Also the return of E. O. Thompson, his account with the estate of Abram Graves, July 5th, 1871, and especially this item two notes against C. S. Graves, appraised at $924.00, and voucher No. 5, being a receipt from Jennie L. Graves *L. Graves* (J. L. Graves) to E. O. Thompson for this note given by C. S. Graves, to the amount of $608.00, payable to the estate of Abram Graves, dated May 14, 1868. Marked Exhibit No. 53.

Mr. ERWIN: I object to this document because it is irrelevant, immaterial and because it is a transcript of alleged acts and doings of a third party, to-wit, E. O. Thompson, administrator, not a party to the suit, because it purports to make a statement of the sale of wild lands in Colquitt County, without stating what lots of land and wild lands of Abram Graves, would be a conclusion to be formed from the nature of the paper. I also object to the alleged receipt to E. O. Thompson, signed J. L. Graves, because the receipt itself is the best evidence, and also because the receipt does not show that it was a receipt for any payment out of the estate, nor does the account show that the administrator had credited it as a payment to J. L. Graves, nor on what account the said notes were returned to the said J. L. Graves, if the said signature J. L. Graves, refers to the said Jennie L. Graves, I object to it also because the said receipt could not bind the interests of Ida J. Graves or Minnie C. Graves in any event. Because there is nothing in the document which would indicate that it has any relation whatever to the matters in controversy in pending suit, and is therefore irrelevant.

338 ROSWELL G. CLARK, called for the defendants, duly sworn, testified:

By Mr. PEARSALL:

Q. What position, if any, do you hold in Colquitt County, Mr. Clark. A. Clerk of the Superior Court, also City Court.

Q. Have you in your custody as Circuit Court clerk, the record of deeds of said county? A. I have.

Q. How far back do those records of deeds go, to what year? A. The year 1881.

Q. 1881? A. 1881, yes sir.

Q. Then there are no records of deed in your office prior to the year 1881? A. There is not.

Q. Do you know where any records prior to 1881 are? A. Of this county.

Q. Yes? A. No, sir; I don't.

Q. Do you know what became of old records prior to 1881. A. Why the supposition is that they were burned when the Court was said to have been burned.

Q. They are not in your possession or custody and you don't know where they are? A. That is true: they are not in my possession or custody, and I do not know where they are.

Q. Do you remember to have ever seen them? A. No, sir; I don't.

Cross-examination.

By Mr. ERWIN:

Q. Mr. Clark, how long have you been clerk of the Court? A. I have been clerk a little over three years.

Q. Were you living here in '80 and '81? A. I was living in this county, not at Moultrie.

Q. Was there something else besides a supposition. You say that the records were burned, wasn't there other suppositions also? A. In what way do you mean?

Q. You have given us one supposition, wasn't there other suppositions, too? A. Well there may have been.

Q. What were they? A. Well, I don't know that I could explain it.

Q. Wasn't it generally talked of that the records were taken out of the Court by fraud, that they were taken out of the clerk's office by fraud, and that the building was burned to conceal the fact that the records had been abstracted from the clerk's office? A. Why, I have heard some such remark, that such a thing might have been possible, that the records were not burned. I have
339 heard some such remark, but I am not able to say who remarked it.

Q. It was pretty generally talked of that that was the truth of the transaction? A. As to its being generally talked of, I could not say about that.

Mr. PEARSALL: I think the testimony is utterly irrelevant unless you can connect it with the defendant, I object to it unless the purpose is to connect some of the defendants with the supposition which existed somewheres, either in counsel or somebody else's mind.

Mr. ERWIN: Counsel brought one supposition, and I asked if there were not other suppositions, one that they were not stolen or burned?

A. I do not even know the court house was burned, because I did not see it burn.

Redirect examination.

Q. At any rate these records are not in your possession and you don't know where they are? A. No, they are not in my possession, and I don't know where they are.

Q. As to the supposition you spoke of having been rumored around, did it ever connect so far as you know, or have any reason to believe, H. T. Crawford and W. W. Ashburn, Union Lumber Company, John McMillan and William McMillan.

Cross-examination.

By Mr. ERWIN:

Q. Since the loss of the records, there has been a great deal of litigation over land titles in this county has there not? A. There has been some, sir.

Q. A great deal? A. I hardly know whether I am able to say what a great deal would be.

Mr. PEARSALL: We object to that question and testimony sought, because the document and records of the Court are the highest, most certain, and more satisfactory evidence in the number of land suits.

Q. There has been a considerable amount of litigation of that sort, has there not?

340 Mr. PEARSALL: The same objection is urged to that as to the previous one, that it is utterly incompetent. It is merely an opinion as to the number—the comparison he makes as to a considerable or great number of suits.

A. If I understand what the word considerable means, there has been a considerable amount.

Q. Have not parties who were dealing in lands here, since that time to a considerable extent, been jailed for fraud in connections with the land titles, been sent to the penitentiary or imprisoned?

Mr. PEARSALL: We object to that testimony as irrelevant and incompetent to any issue involved, and that the records will be the highest and best evidence.

A. I don't understand fully what you mean.

Q. Have not the parties who were operating considerably in these land titles in this county since this alleged fire, been convicted in Decatur, Baker County, etc., for that same kind of business? A. Why, I think it is proper for me to answer, I don't know. I have heard of such things.

Redirect examination.

Q. Have you ever heard of either of these defendants being connected with these rumors that you report? A. No, that is none of those that you mentioned while ago.

Q. Do you know of any conviction of your own knowledge in this county or in Baker or Decatur, for improper dealings in land or land titles in Colquitt County, with lands in Colquitt County? A. If I do, I cannot call it to memory now.

Mr. ERWIN: Or other counties?

Mr. PEARSALL: We will admit there has been convictions in some counties in the State of Georgia.

Agreement.

It is agreed between the counsel of record for the respective
341 parties that it is a fact that the Court-house of Colquitt County, Georgia, a short time prior to May 20th, 1881, the first deed appearing on the records now existing in the clerk's office of said county being recorded on the 20th day of May, 1881, and that the records of the clerks' and of the ordinaries' office relating to transactions prior to that time are not now in existence.

It is further agreed between the counsel of record for the respective parties in this cause that there was no administrations taken out on the estate of the late Cyrus S. Graves, husband of Jennie L. Graves.

For complainant:

JOEL S. NORMAN, called for the complainant, duly sworn, testified:

(By Mr. ERWIN:)

Q. Where do you reside? A. Five miles east of here, about that, it has never been measured.

Q. In Colquitt County? A. Yes, sir.

Q. How long have you lived in Colquitt County? A. Ever since the county was made. I suppose I was born in about two miles or two and a half of where I live.

Q. Who was your father? A. James M. Norman.

Q. Was he a Justice of the Peace of this county? A. Used to be, and also while it was Thomas County.

Q. Was he a Justice of the Peace after this county was created for a great number of years? A. I think he was; yes, sir.

Q. You know he was, don't you? A. I do, of course, I do.

Q. When did he die? A. I think it was in '64.

Q. 1864? A. Yes, sir. I know I was injured on the 29th of November, 1863, and after that we went to carry the one of his sons to Albany to go on back to the army, and he died way above here as he come back home; I think it was some time, I could not tell you the month, in '64, that is my recollection.

Q. When were you born? A. I don't know whether I can tell you now the day of the month or not.

Q. About what year? A. It was in 1849.

Q. '49 or '39? A. '39, seems like it was about March or February, one of the two.

342 1839? A. Yes, sir.

Q. After your father's death, did any of the old papers relating to his office of Justice of the Peace remain in possession of his family? A. Yes, sir.

Q. Have you got any of those papers now in your possession? A. I have, sir. And if you will let me, I would like to talk a little bit more about that gentleman over there. (Mr. M. P. Callaway.) I did not know anything about him.

Q. You mean Mr. Callaway? A. I was in the clerk's office in the old Court House, I can't tell you how many years ago, and some one called my name, and a little later he wanted to know what relation me and old man James M. Norman was. He acknowledged to it to-day to me that he was the man, and he wanted to know if I had any of my father's papers; I told him I did, and he wanted to see them; I told him I did not have them with me, and then he says, I will go to your house if you will let me see them. I refused to show them to him, and to-day he acknowledged he was the man.

Q. You did not [know] him at that time, that was a couple of years ago? A. It was that long, I reckon; might have been a little longer.

Q. Two or three years ago? A. Yes, sir; I guess it was.

Q. You did not know who it was at the time he asked? A. I did not know a thing in the world about, or what his business was.

Q. You are subpœnaed here to-day? A. Yes, sir; and ordered to bring them papers.

Q. And you brought them? A. I did.

Q. Have you got them in your possession now? A. Yes, sir.

Q. Let's see them? A. You had better have something good and level, which you have got there, the table that you can lay them on. Recollect, these papers are to be handed back to me.

Q. Is this paper, which I now hold in my hand, one of them? A. Yes, sir.

Q. The paper purports to be a Justice's execution dated 25th day of May, 1860, signed James M. Norman, J. P.

Q. Do you know your father's handwriting? A. I claim that to be his regular old way of signing his name.

Q. You know his handwriting? A. Why, of course, I know it.

Q. And this is it? A. It is bound to be. I am satisfied of it, as much as anything. Who is that again?

343 Q. Allen against J. J. Redd, returned no property, July 3, 1860. —— Bryant, the first name is torn out by a hole in the paper. A. Calvin Bryant.

Paper marked Exhibit No. 54.

Q. Look at this paper, purporting to be a justice's execution, issued the 18th day of April, 1860, Edwards against James J. Redd, this will be numbered 55, that has got the return of "no property" on it, Calvin Bryant also, now look at the signature to that and state whose signature that is? A. I have looked at it numbers of times,

I claim it to be my father's. You may run them together and see if they don't correspond.

Paper marked Exhibit No. 55.

Q. Here is another paper, did you bring this one also? A. Yes, sir.

Paper marked Exhibit No. 56.

Q. This paper purports to be a warrant or writ for bringing one Alderman Wilson before James M. Norman, a Justice of the Peace, and purports to be issued on the 16th day of May, 1856. Is that one of the papers that you said came from your father's effects? A. I am satisfied that is his writing. You will notice where he signs his name to a paper, they are pretty much every one very much the same thing.

Q. These are papers that came into your possession in the way you state, from your father's effects? A. Yes.

Q. I will ask the examiner to note that that paper is at present in three pieces, and is very old and rotten? A. He always tried to sign his name just the same. He got his thumb ruined. He stuck a lightwood splinter in it. He could write a common hand a little better than he could sign his name, but he always kept up signing his name the same.

Q. Now look at this paper, which I now hand you, marked Examiner's Exhibit No. 6, purporting to be a deed executed in Thomas County, Georgia, by Joel S. Graves, and signed in the presence of R. J. Marlow, James M. Norman, J. P. I ask you to state whether in your opinion from your knowledge of your father's handwriting, that is the signature of your father? I ask you whether the
344 signature of that name James M. Norman on this deed is, in your opinion, the signature of your father? A. Well, it don't resemble it to me, my friend.

Q. From your knowledge of his handwriting, would you state that that was not his signature on your belief? A. Well, I really can't believe it is earnestly. Just lay them all down. You notice that "N" how they run? Law, the other over, you will find it is apt to be about that way.

Q. Taking all the letters in the way they are written together, in your opinion, it is not your father's handwriting? A. I can't think it.

Mr. ERWIN: I tender in evidence the two Fi. Fas. and return thereon, and the writ, already identified.

Q. Do you know whether Calvin Bryant was the constable for the district in which your father was Justice of the Peace back at that time? A. At that time, I could not tell you that I do. But I know he was Justice of the Peace under him.

Q. You mean that he was constable under him? A. Bryant was bailiff under my father. I know that he used to be bailiff under him.

Q. Along some time about that period? A. I could not say about that. Calvin Bryant is living.

Q. Is that about the time, before the war? A. It was before the war.

Q. That you remember? A. Yes, sir.

Cross-examination.

(Mr. Pearsall:)

Q. You say Calvin Bryant is living? A. Yes, sir.

Q. In this county? A. Yes, sir; if I had any eye to this——

Mr. Pearsall: We object to so much of the evidence tendered as purports to be an entry made by Calvin Bryant. That paper tendered appears to be a court paper, and not coming from the proper custody, the entry does not prove itself, the witness who purports to have made the entry being still alive and accessible, his evidence would be the highest and best evidence.

Mr. Erwin: Where does Calvin Bryant live?

345 A. It is down on Hog Creek somewheres. I think it is over six miles.

Q. Mr. Norman, this exhibit which is marked Exhibit No. 56, the beginning of this writ or paper says, by "James M. Norman, one of the Justice's of the Peace." Is that handwriting of James M. Norman there? A. It favors one of his hands.

Q. It favors one of his hands? A. He got his thumb—a lightwood stick stuck in it and the end of his thumb opened and the bone came out, and just common writing where he had a right smart writing to do he wrote it with a hand resembling that to me, but where he signed his name it was the regular old handwriting.

Q. But when writing along a paper he came to his name he did not write that different from the way he signed his name? A. I don't know whether he did that or not, but I know in signing papers, signing his name, anything that way, I noticed them no other way, never did.

Q. But when he write it some other way, he might have written it different? A. He might have done it, I don't know.

Q. Do you mean to say that is his signature there, being the first place where his name appears on this Exhibit No. 56, by James M. Norman, one of the Justices? A. Notice that M. See whether it resembles this or not. I believe he wrote that. I believe he wrote that.

Q. And you say that is his signature to this Exhibit 56, is his handwriting? A. I believe it to be sir.

Q. On the back of Exhibit 56, it appears, James M. Norman, Esq., Moultrie, Colquitt County, Georgia, did he write that? A. That "M" is sorter like but it ain't made exactly, you will notice——

Q. But you think that is his handwriting? A. I would not be surprised if he didn't, but it ain't like a good portion of them.

Q. But from your general opinion, he wrote that, he may have written that? A. He might; I can't tell you. This is a little different, if you will notice, from his general way; if you will notice that "N." It is a little different. I want to tell, my friend, only what I believe and feel and know to be the truth.

Q. But it appears that he wrote his name on the back of this Exhibit 56?

Mr. ERWIN: I object. That is a question, whether he did *right* [write] that name on the back.

346 Q. It appears from this address on the back of it, and also where it appears up there—— A. That looks natural.

Q. And also that signature, you identify them as being his genuine signatures? A. I believe it to be.

Mr. ERWIN: Which do you believe to be, the bottom signature to the writ that you are talking about? A. Yes, sir. I don't care where you notice them, you will see if they don't correspond near just the same.

Q. And the first up there you say also appears to be his genuine signature? A. It looks like it to me; but I can tell on the old paper.

Q. Also on the back of the paper, it appears to be his signature? A. That looks, if you will notice, a little different from what I told you about that.

Q. But still it looks like the same signature? A. He might have done it, but that "N," if you will notice that part of it, is a little different from that. On another place you will find where he has made it.

Q. Now, do you mean when he was writing on the back of that, if he wrote on the back and when he wrote up there that he was not as careful as he was when he was writing—— A. Might have been. I ain't able to tell you about that.

Q. Now, in making up your opinion of the genuineness of his signature from these three papers which you produce, you take them all three together, there they are together now, take first the J's, the J's are not all alike, are they? A. No.

Q. You say this one and this one, the "J's" in Exhibits 54 and 55—— A. They do to me.

Q. And that of Exhibit 54—— A. It looks like it has a little curl down there and don't run off here like them two. That's the only difference I can see. But notice the M's and see if they don't run pretty much together and the N's together.

Q. The N's you say are exactly alike? A. They ain't exactly, but they are near enough; I believe that he made each one of them, and also this one.

Q. Look at the three R's, can you see them enough to see the three r's on these three Exhibits (54, 55, 56? A. I see that the "r" on 54 is a little different from the r.— It looks a little opener than what they do to me (referring to Exhibit No. 56).

347 Q. Look at the M's, on the three, are they exactly alike, being the three little m's? A. I can't see myself but very little difference.

Q. Now, this "m," notice this small "m" in Exhibit 56; do you think that "m" is exactly like the "m" in Exhibit- 54 and 55? A. I cannot tell well enough to see much difference, if any, my friend.

Q. Look at the "a" in Norman, in Exhibit 56; can you see that

well enough to see that there is a difference between that "a" and these others two a's? A. There may be a little.

Q. He signed his name on Exhibit 56 with "J. P.," doesn't he? A. I think so.

Q. Is the J. he makes there like the J. he makes in the first letter of his name? A. You show me, my friend, which J. in Exhibit 56 and the other J.?

Q. That J in the J. P., and the J in his "James" in Exhibit 55, this J here, are those two J's alike? A. That J may not have as much of a turn here as in James (Exhibit 56).

Q. You can see some difference by close examination? A. It is but precious little, my friend, that I can see, if any.

Q. How old did you say you were? A. I think I am between 63 and 64 years old.

Q. You use glasses? A. Yes, sir. But I ain't got none that I can see good in, close or far.

Redirect examination.

(Mr. Erwin:)

Q. Mr. Pearsall has questioned you about the name James M. Norman on the back of this Exhibit 56, the warrant or process, and you called his attention to the difference between the N in that name and the N as it appears in the Norman, James M Norman, signed to the execution. Now, look at this return on the execution Exhibit No. 55, signed Calvin Bryant, and look at the "and," and I ask you whether or not the two n's—— A. They look alike, any of you can see it and tell it better than me, that can see letter.

Q. In your opinion, the James M. Norman written on the Exhibit 56 looks like the handwriting of whom? A. That looks like—them two letters look like one man done it all. That n and that o and this n and that n look like the man that wrote the one wrote the other; I don't know whether Calvin Bryant wrote that or not, but I expect he did.

348 Moses M. Blanton, called for the complainants, duly sworn, testified:

(Mr. Erwin:)

Q. Where do you reside? A. In Moultrie.

Q. How long have you lived in Colquitt County? A. I have been here ever since '81.

Q. Mr. Blanton, did you have any transaction with Mr. Bower, of Thomasville, P. S. Bower, along about '93? A. I don't remember the date exactly, but I had some transaction wth him about that time.

Q. Did you buy a lot of land from him? A. I bought a part of a lot.

Q. Was that the lot 353 on which Mr. Cooper's still was put up? A. I don't know how the numbers of the land lot run in the vicinity out there.

Q. You never bought but one lot? A. One lo-

Q. Who furnished you the money to buy it? A. I think I got money from Mr. Cooper, is my remembrance.

Q. Mr. Cooper? A. Yes, sir; I will not be positive; I think I did.

Q. J. F. Cooper? A. Yes, sir.

Q. Did Mr. Autrey have something to do with the transaction too? A. Well, I made the purchase for Mr. Autrey.

Q. You made the purchase for Mr. Autrey? A. Yes, sir.

Q. Did you take a deed from Mr. Bower in your own name? A. My remembrance is, I *taken* [took] the deed in my own name.

Q. Well, after you took the deed in your own name, did you make any deed to it to Mr. Autrey? A. Yes, sir.

Q. About how long afterwards? A. Well, I cannot say exactly. It does not seem like it was very long, thirty or sixty days. It seems like it was 60 days. It was not a very long time before I made the deed.

Q. It was a short time? A. A short time.

Q. You did not buy it for yourself? A. No, sir.

Q. You were furnished the money to buy it with? A. Yes, sir.

Q. Did you hold title to the lot any length of time, or just a very short time? A. Very short time.

Q. Can you say whether a week or two or 30 days? A. I cannot say exactly. I have not thought about it; but it was a short
349 time. I think 60 days would cover it; may have been only 30 days, but a short time.

Q. It was not anything like six months or a year, anything like that? A. No, sir; I don't think it was.

Q. Did you, while you were in possession of the deed from Bower to you, you did not make any change in the dates in it yourself? A. No, sir.

Q. You did not know of any being made while you had it? A. No, sir.

Q. You gave the deeds that you got to Mr. Autrey, did you? A. Yes. I don't remember exactly how long I kept the deeds. I don't think I had them recorded. It seems like Mr. Autrey said he thought I ought to pay for recording the deeds, but I would not. I only held them a short time.

Q. Was that right after you turned them over to him that he said that? A. Yes, some time soon after that. Very short time. Was not very long.

Q. After the deeds were recorded? A. I don't know whether he had them recorded or not at that time.

Q. I call your attention to this deed which is in evidence, marked Exhibit No. 22, purporting to be a deed from P. S. Bower to M. M. Blanton, to lot 353, in the 8th district of Colquitt County, and call your attention to the last figure, after the word November 9, then what appears to be underneath in lighter colored ink, 3, and on top of it 2, written. You did not make any change yourself in regard to the date? A. I don't remember doing so; no, sir.

Q. That deed purports to be dated the 14th of November, whether 1892 or '93, depends upon what that last figure there was properly. And here's a deed, Exhibit 21, which purports to be a deed from you

to Mr. Autrey, dated the 30th day of November, 1893. This last deed in the deed you made to Mr. Autrey? A. Yes, sir.

Q. The best of your recollection these two papers were executed within—the deed you got from Mr. Bower and the one you made to Mr. Autrey, were made within sixty days from the time of the first one? A. Yes.

Cross-examination.

Mr. PEARSALL:

Q. You lived in Thomas County before you moved to this county, did you not, Mr. Blanton? A. Yes, sir.

Q. You knew Mr. Bower personally? A. Yes, sir.

Q. I suppose Mr. Cooper and Mr. Autrey asked you to go down there and buy this lot of land for them? A. Yes, sir.

350 Q. They furnished you the money for you to do it? A. Yes, sir.

Q. Was that Dr. Bower? A. Dr. Bower.

Q. He was a man of good reputation, wasn't he? A. Yes, sir.

Q. You never heard anything about his shady transactions in land matters, did you? A. No, sir; never have.

Q. Did you receive a difference in the consideration? You made something out of the transaction? A. Yes, sir.

Q. Did you know anything about this lot of land before it was bought, whose land it was? A. Dr. Bower spoke to me in regard to the land; he said he had, him and Dr. Bruce.

Mr. ERWIN: I object to this as cross-examination. If you go into it, you make him your witness on any transaction otherwise than on the deeds, when those deeds were executed and who furnished the money for it, why he is your witness under the rule.

Mr. PEARSALL: I do not accept counsel's conclusion as to the law in these matters.

Q. Tell, Mr. Blanton, the conversation you had with Dr. Bower about the matter?

Mr. ERWIN: I object to the conversations had with Dr. Bower as being irrelevant, it not being a declaration made against his interest, therefore being hearsay and not admissible against these complainants.

Q. What was the conversation? A. I went down there, went to see Dr. Bower, and asked him if he wanted to sell it. He said he would sell it if I would give him his price, and the next trip I went down I bought the land from him.

Q. Did you know anything about the possession on that lot of land for Dr. Bower? A. He had spoken to me in regard to the possession.

Q. He claimed he was in possession of it? A. He said he had ought to get some rent out of it.

Mr. ERWIN: At the time you purchased it?

351 A. No, sir; that was in a conversation before that.

Mr. ERWIN: I object to that on the additional ground that the

statement is no part of the transaction under consideration, it being hearsay and evidence not against his interest.

Q. Dr. Bower had a tenant in possession of this land? A. Yes, there was a man living on there. Had been living there, McCranie.

Q. Do you know how long this land had been in possession? A. House there when I came to this county.

Q. How many years ago was that? A. In '81. I could not swear it was. I did not see it then. I did see it pretty soon after I came here.

Q. Did it seem to be in a state of cultivation, around it? A. Now, I cannot say as to that?

Q. You don't remember that? A. No, sir. There was on some part of the place; I don't know how far it extended.

Q. Do you know it has been in possession ever since the time you sold it to Mr. Autrey, or do you—— A. No, sir; I could not say. I have been by the place several times. The house is a little off the road.

Q. After you bought it in '93 [92] or '93, whichever it was, the still was put up there at once, wasn't it? A. Yes, sir.

Q. Now, wasn't there a number of houses built on it? A. Yes, sir.

Q. Some fifteen or twenty houses? A. Some houses built on it. I saw them passing the road.

Q. People living there all the time? A. I think so.

Q. In fact, the still was located on it, wasn't it? A. That is my understanding. I never knew where the line was. It was my information that the still was on it.

Q. Built there soon after you bought it? A. Yes, sir.

Q. And people have been living on there ever since, have they not. A. Yes, sir.

Q. As many as a dozen or more families occupying it? A. Quite a number of families on it.

Q. You know nothing about any improper conduct about the changing of this date, if there has been a change. A. No, sir.

Q. You know of no advantage it could originate to anybody by reason of the changes, if any? A. No, sir; I never knew there was any such thing.

352 Q. You paid about what the land was worth, didn't you? A. I suppose I did, about what the land was worth.

Redirect examination.

(Mr. ERWIN:)

Q. The lot where the still was, was lot 353, being the south half of the lot? You deeded a half interest in that lot? You bought an undivided half interest in the lot, according to the deed, and you deeded a half interest, or rather you deeded a full interest in the south half of the lot to Mr. Autrey, and the still was on the south half, wasn't it? A. I never knew how the lot was divided. I knew that there were two claims. I did not knew whether it had been divided up to that time or not.

Q. I am talking about that lot of land this house McCranie lived in was on, wasn't that on what was then understood to be lot 352, to the right of lot 353, across the road, thought at that time to divide the two lots? A. I got information some way, I don't know correctly, when the survey was made, they found that house was on the Bower instead of the other lot that the biggest clearing was on.

Mr. PEARSALL: We object to any evidence as to what he understands, unless he knows of his own knowledge.

Q. When you bought from Bower that half interest, undivided half interest in that lot, at that time, was it understood whether the house was on lot 352 or 353? A. Bower claimed the house before that time.

Q. It had been in dispute as to whether the house was on one lot or the other? A. I don't know whether there had been any dispute or not more than Bower had claimed the clearing around the house, south of the house, going south. It is northwest, most of the clearing is.

Cross-examination.

By Mr. PEARSALL:

Q. Is Dr. Bower dead? A. Yes, sir.

Q. Been dead, do you know how long? A. No, sir; several years.

353 JOHN F. COOPER, called for the defendants, duly sworn, testified:

(Mr. PEARSALL):

Q. Where do you reside? A. A mile south of the Court House.

Q. In what county? A. Colquitt.

Q. How long have you lived in Colquitt County? A. Since 1870.

Q. How far did you live from lot of land 353? A. Since '86 I have lived on the adjoining lot, 385, until two years ago. I still own that place.

Q. Do you know anything about the possession on this lot 353 in the southeast corner, I believe it is, isn't it? A. Northeast corner. That possession was there when I bought the lot adjoining it.

Q. In '86? A. Yes, sir.

Q. Were people living in that house and cultivating the land around it? A. Yes, sir.

Q. As whose tenants were they, living in that house and cultivating this land around the house?

Mr. ERWIN: I object to that question, because he has not yet stated who the occupier of the house was. A preliminary question.

Q. Do you know who occupied the house? A. When I first knew the place? Haney occupied the house, then J. W. Wells, Billy Watkins, then Johnson, and then McCranie. When he left

the place I bought from Mr. Ashburn and put a tenant in the house. It has been in continuous possession ever since.

Q. After it was bought by Mr. Ashburn, has there been a tenant in there as tenant of Mr. Ashburn ever since?

Mr. ERWIN: Do you fix the date when Mr. Ashburn bought it?

Mr. PEARSALL: It was in '92. The deed is on file. It has been used in another case, but I think it was in——

A. '93.

Mr. ERWIN: I object now to any evidence about Mr. Ash-
354 burn's setting up title unless the deed is produced, or any alleged tenancy under Mr. Ashburn, unless Ashburn's title be shown some way, the deed being the best evidence of the date under which claim is set up.

Q. Answer the question as to whether or not there has been a tenant of Mr. Ashburn since he bought it? A. Yes, the tenant continued in there until I bought it from Mr. Ashburn, and he has been mine since.

Mr. ERWIN: I object to that question as to the buying of a lot of land, or title to it, on the part of Mr. Cooper, unless the deeds are produced showing when he bought it, what he bought, title to land being a matter of document.

Q. Were families living in the house, Mr. Cooper? A. Yes, sir.
Q. All the time? A. Yes, sir.
Q. Did they cultivate the field around there? A. They cultivated the land cleared.
Q. Do you know how long the tenants of Bruce and Bower have been in possession of that land?

Mr. ERWIN: I object to that as a leading question. The witness has not yet testified anything about Bruce and Bower or who were their tenants, and it is not only leading, but incompetent.

A. I said who were the tenants.
Q. State who they were tenants for? A. They were tenants for Bruce and Bower.
Q. When do you know that they first went in as tenants of Bruce and Bower, about what year?

Mr. ERWIN: I object to that as a conclusion of law. The witness can testify to facts as to his knowledge, in what respect he knew that they were tenants of Bruce and Bower if he can, but cannot testify to conclusion that they were tenants of Bruce and Bower, no title of Bruce and Bower being put in evidence whatever and no facts stated to that effect, and the evidence of one of the tenants, Mr. McCranie, also Haney, being to the contrary.

Q. Just state how long you have known the tenants of
355 Bruce and Bower to have been in possession there? A. I know they were in possession since '91.
Q. Before '91? A. It was always claimed as their land. That

is all I know personally about it. I do then, because I began paying taxes for those people that lived there, in '91.

Mr. ERWIN: I object to that evidence in regard to payment of taxes, because the receipts for the taxes would be the best evidence, and next to that the tax books would be the best evidence.

Q. Has it been in continuous possession since '90 or '91 up to the present time? A. It has. Some one living in the house all the time, cultivating the land every year.

Q. Families living on there, were there? A. Yes, sir; families lived there.

Q. They cultivated the field around that? A. Yes, sir; they did.

Q. After it was purchased by Blanton, and by Blanton sold to Autrey, what improvements were made on the property? A. Afterwards?

Q. Yes? A. '92 or '3 on the south half of it, a still put up there.

Q. Turpentine still? A. Turpentine still and worked for turpentine.

Q. Dwelling house? A. Yes, sir; dwelling house.

Q. How many do you suppose, dwelling houses put up there? A. I don't know; a good many shanties.

Q. Has somebody been living in it, cultivating it ever since the still was built there? A. Yes, sir; somebody has been living there ever since.

Q. Now, prior to '90 and '91, were the tenants of Bruce and Bower in possession of it? A. They were.

Mr. ERWIN: The same objection to that question and answer.

Q. Every year? A. Every year.

Q. About when did the tenants of Bruce and Bower go in possession of it, that you know? A. I don't know.

Q. About what date? A. I know since '90 or '91, and they were living there a good long while before, but I have reasons to know since '90 or '91.

356 Q. You know the possession has been continued since '90? A. Yes, sir.

Q. About what did the improvements made on the south half amount to—how much money was spent in making those improvements. A. I don't know, sir.

Q. You have got an idea? A. No, sir; I have not any. I don't know about it.

Q. Do you know when Johnson first went in possession of it? A. I don't recollect the year.

Q. Was that before '90? A. It was somewhere about '90, may have been a year or two before, not later than '91.

Q. Since '90, you know his possession has continued? A. Under Bruce and Bower since then.

Cross-examination.

Mr. ERWIN:

Q. You put up the still on the south half of lot 353, didn't you? A. No, sir.

Q. Who put that up? A. Mr. Autrey, I think.

Q. You bought afterwards from Mr. Autrey? A. No, sir; I never bought that part at all.

Q. Wasn't that called Cooper's still? A. Called Cooper station. That was on the road. I was not personally interested in it.

Q. You were not interested in it? A. No, sir.

Q. Your name is J. F. Cooper? A. Yes, sir.

Q. Didn't you and Mr. Autrey get Mr. Blanton to go and buy the lot from Bower? A. Yes, sir.

Q. You are the gentleman Mr. Blanton testified about? A. Yes, sir.

Q. Now, that south half of 353 was virgin timber when you put your still on it? A. Yes, sir.

Q. No considerable part has been under cultivation? A. No, not a great deal of it.

Q. Just a little patch right around the still? A. Yes.

Q. Where you put the still, where the still was put? A. Yes, sir.

Q. The still has been abandoned there, hasn't it? A. The still itself. They have moved it off this season.

Q. The shanties are practically all gone that were used in connection with the still? A. The shanties are there all right yet, I think.

Q. They are just little shanties used for negroes working in connection with the still? A. Some dwelling houses, two at
357 least. Very good dwellings, good as they ever make in this country for turpentine business, I think they were.

Q. It was little dwellings used right there by the men working around the still? A. Yes, the proprietor lived there for a good long while.

Q. The little patch that you were speaking of, on that south half of 353, was put there after Mr. Autrey bought it? A. Yes, sir; put there after Mr. Autrey bought it.

Q. The part you are talking about as having a house on it previous to Mr. Autrey's having it, is a little place in the northeast corner of lot 353? A. In the northeast, yes, sir; the first settlement on the lot.

Q. Lot 352 lies right east of it? A. East.

Q. And there is an old road that cuts off the northeast corner of the lot 353, and that house you are talking about lies in that little piece of the corner that lies to the east of the road, isn't it? A. Yes, to the east of the road. Northeast of the road.

Q. Referring to this plat, Exhibit No. 1, made by Mr. Austin, that being lot 353 there, right in the very northeast corner is a little black spot put down for the house, and a line cutting off that corner, marked "public road." That's the house you are talking about? A. Yes, that is the first settlement on the lot.

Q. And the little piece that was in cultivation, was that little cor-

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ner in there between the public road and the corner of the lot? A. In 1890, yes, sir.

Q. And that is what you are talking about as being the settlement on lot 353? A. At that time, yes, sir.

Q. The man that cultivated that little place, the farm that he ran extended over on lot 352 which lies to the east of 353? A. Yes, sir; small part of it. Some of it was over there.

Q. The biggest part was on lot 352? A. I suppose it was.

Q. You know it was, don't you? A. More of it was.

Q. The balance of lot 353, the north half, not included in that corner, that was in virgin timber, at that time? A. Yes, sir.

Q. Mr. Cooper, do you know anything to the effect as to whether the timber has been cut off of the lower half of lot 353, that you have just been talking about, in the last two years? A. Last two years? South half? No, sir; not in the last two years. It has been cut off.

Q. Since the beginning of this suit, you know, of this case? A. No, sir; on the south half. It was cut before.

Q. The north half of 353, the north half? A. It has been
358 cut later. I don't just know when exactly, but it was cut later than that, a good deal.

Q. The north half, do you know who cut that? A. R. J. Corbett & Company.

Q. Wasn't it H. T. Crawford & Co.? A. I don't think so. I think he had sold it at that time.

Q. You don't know? A. No, sir; I don't think he was, though.

Q. Has the timber been cut off of lot 383 since this suit commenced, a lot which is in this suit also? A. Yes, sir. It has been cut by R. J. Corbett & Co.

Redirect examination.

Mr. PEARSALL:

Q. Who cut the timber on the south half of 353 for turpentine purposes? A. Autrey & Reeves. In my opinion it was Autrey & Page at the time.

Q. Who cut it for sawmill purposes? A. It was cut by the Peacock Company, I think. It was Carmen, that was my understanding.

Q. This diagram that has been handed you, Exhibit 1, this field and house up in the corner, and that public road running there. How long do you know that field has been in possession. Do you know how long it has been in possession? A. It was in possession in 1875. I know, because I was passing there.

Q. Has it been in possession ever since that time? A. Yes, sir; continuously.

Q. Do you know when those people on there commenced paying taxes for Bruce and Bower for the possession on that property? A. I think in '90 or '91.

Mr. ERWIN: I object to any evidence that they paid it for Bruce and Bower, so far as that contention is concerned. I make the ob-

jection because the payment of taxes would be best shown by the person who paid it, by receipt of the tax collector, or the tax collector's books.

Mr. PEARSALL: I tender in evidence a certified copy of the tax returns of lot 353 in the 8th District, from the Comptroller General of the State.

Exhibit No. 57.

359 Mr. ERWIN: I object to this certificate because it shows on its face that it is not a copy of any returns, but is merely a letter from the Comptroller General to H. T. Crawford, dated May 5, 1899, not giving the particulars of the returns, what individual made the returns, what claim was set up by the individual, whether for a part of the lot or for the whole lot, and it appearing otherwise in the record that the same parties there were not even claiming the whole of the lot, but different parts and different interests in it. Some of the parties mentioned not being parties who are parties to this case at all. The Comptroller cannot state conclusions as he has attempted to do here, and can only give copies from the record, and certify that they are copies from the record.

Mr. PEARSALL: I tender in evidence the following papers:

Exhibit No. 6. Deed from Joel S. Graves to James J. Redd, dated the 2nd of November, 1852, to lot 383 in the 8th District of Colquitt County.

Mr. ERWIN: I object to this deed, first, because it is not properly proven, and also because the evidence is that the signature of James M. Norman, J. P., purporting to have taken the acknowledgment thereto, is shown by the testimony not to be the genuine signature of James M. Norman, who was justice of the peace. Also because the signature Joel S. Graves to the same is not the genuine signature of Joel S. Graves, as shown by the evidence; also because the deed was not properly recorded; also because the deed cannot be admitted as an ancient deed without showing that it comes from the proper custody, the parties now offering the deed claiming under a chain of title to lot 383 running back to this deed, and two links of the chain are shown by the evidence to be made up of forged deeds, and the same not coming from clean hands, it cannot be admitted as an ancient deed, not coming from the proper custody. Also because the said James J. Redd, according to the evidence, has disclaimed any interest or title under said deed.

Mr. PEARSALL: I enter a protest to the character of the objections that are urged, that are in the nature of arguments, as burdening the record.

360 Mr. PEARSALL: I tender Exhibit No. 7, deed from James J. Redd or Read, to Joseph A. Shewmake, conveying the same lot of land.

Mr. ERWIN: I object to this deed because it is not properly proved. Also because it is affirmatively shown in the record that the signature N. C. Monroe, notary public, before whom said deed purports to have been executed is spurious; that the same is not the genuine signature of N. C. Monroe, and the deed purports to have been executed in Bibb County, Ga. The evidence shows that

N. C. Monroe was not a notary public of said Bibb County, Ga., at the time said deed purports to have been executed. Also because the deed cannot be admitted as an ancient deed in that it does not come from proper custody, the parties now offering it tracing back through a line of deeds several of which are shown by the evidence to have been forgeries.

Mr. PEARSALL: I desire to enter a protest to so much of the objection as is argumentative in its nature.

Mr. PEARSALL: I tender Exhibit No. 8, deed from Joseph H. Shewmake to Marshall Hobbs, conveying same lot of land.

Mr. ERWIN: I object to this deed because it is not properly proved, and because it is affirmatively shown in the evidence that the signature of W. T. Thompson, notary public, signed to the same, the deed purporting to be executed in Chatham County, Georgia is spurious, the same not being the genuine signature of the said W. T. Thompson, notary public. Also I object to the admission of the deed because it is offered in evidence by a party claiming under a chain of title of which the deed is a link, in which several links of the chain are shown to have been forgeries.

Mr. PEARSALL: I tender a deed from Shewmake to Wilkes to the same lot. Exhibit No. 9.

Mr. ERWIN: I object to this deed because it is not properly proven and because it is offered by a party claiming
361 under a chain of title of which this is one link, in which chain several of the deeds are forgeries as proven.

Mr. PEARSALL: I offer Exhibit No. 10, deed from Wilkes to Wilby to the same lot.

Mr. ERWIN: Same objection as to the last deed.

Mr. PEARSALL: I offer Exhibit No. 11, Hobbs to Wilby.

Mr. ERWIN: Same objection made to that deed.

Mr. PEARSALL: I offer deed from J. Z. Elliott, receiver, to A. T. MacIntyre, Jr., with certified copy of the order of Court from Berrien Superior Court authorizing the sale.

Deed marked Exhibit No. 12. Certified copy or order marked Exhibit No. 58.

Mr. ERWIN: I object to the deed because no authority is shown for the receiver to make any private sale of said lot of land. I also object to the order of Court, certified copy of which is tendered in evidence, as Exhibit No. 58, by defendants, because the order does not purport to give the said receiver any authority to sell said lot of land at the time and place which the defendants evidence shows said lot was sold, to-wit, in the County of Colquitt, under which the said deed, Exhibit 12, purports to convey said lot to A. T. McIntyre, Jr.

Mr. PEARSALL: I also offer deed from S. L. Hayes, administrator estate A. T. MacIntyre, Jr., to John A. McMullen, conveying the same lot of land, together with certified copy of order of Superior Court authorizing the sale.

Deed marked Exhibit No. 13. Order of sale marked Exhibit No. 59.

Mr. ERWIN: No objection to the admissibility in evidence
362 of this deed. Objections to the deed as to its effect as evidence are reserved. I object to the certificate to the order authorizing the sale by Samuel L. Hayes on the ground that there is no revenue stamp attached to said certificate.

Mr. PEARSALL: I tender Exhibit No. 14. Deed from John McMullen to H. T. Crawford conveying the same land.

Mr. ERWIN: Note objection to the admissibility of the deed. Objection to its effect as evidence is reserved.

Mr. PEARSALL: I tender the certificate of Hansell & Merrill marked Exhibit No. 5, to the effect that they had examined this chain of title just tendered and approved it.

Mr. ERWIN: No objection to the admissibility of it. Objections to its effect reserved.

Mr. PEARSALL: I tender a sight draft from H. T. Crawford on Peacock Hunt Naval Stores Company to John McMullen for $1,500. Exhibit No. 60.

for lot 383 with the indorsements thereon.

Mr. ERWIN: This is the check Mr. Hayes testified about, is it not?

Mr. PEARSALL: I think it is. That is my impression. I am quite satisfied it is. I know it is.

Mr. ERWIN: I have no objection to its admissibility in evidence. Objections to its legal effect reserved.

Mr. PEARSALL: I tender certified copy of Exhibit No. 6, deed from Joel S. Graves to James P. Read or Redd, from the record of deeds of the clerk's office, Superior Court, Colquitt County, recorded in 1890. Marked Exhibit No. 61.

363 Mr. ERWIN: No objection to the admissibility of said deed, all objections to its effect being reserved in connection with the objections made to the original deed of which it purports to be a copy, which has already been tendered by counsel and objections made thereto.

Mr. PEARSALL: I tender a deed from Betty Bruce Daniel to A. M. Watson, to lot 353 in the 8th District, being Exhibit No. 23.

Mr. ERWIN: I object to this deed because it purports to be executed before one H. Garbonatti, Judge of the County Court, the deed being headed, "Georgia, Thomas County," it being in evidence that H. Garbonatti was not a judge of any County Court in Thomas County at any time, said date being the 30th of June, 1890. Also that while there is a certificate on the back of the deed which indicates that H. Garbonatti was clerk of the County Court of La Plata County, Colorado, that there is no proof that the said H. Garbonatti as such clerk or judge in Colorado, or that the deed was executed in the State of Colorado at the time it purports to have been executed, and on the further ground that said H. Garbonatti was not the judge of said County Court of La Plata County, Colorado, at the time said deed purports to have been executed.

Mr. PEARSALL: I offer Exhibit No. 24, deed from A. T. MacIntyre, Jr., and A. M. Watson to W. W. Ashburn, the original deed being at present in the files of the Court in the case of Kilgore *vs.*

Norman, having been taken out of the record in this case by order of the Court.

Mr. ERWIN: I am unable to specify any objections to this deed as the original is not now before me for inspection. I reserve therefore my right to make any objections when the deed is presented at the trial.

Mr. PEARSALL: That is satisfactory.

Mr. PEARSALL: I tender Exhibit No. 22, deed from P. S. Bower to M. M. Blanton to lot 353.

364 Mr. ERWIN: I object to this deed because said deed shows on its face that the date of its execution has been changed from the 14th of November, 1893, to the 14th day of November, 1892, the figure 2 being plainly written over the figure 3. Also because the grantee of the deed has testified in this cause that the said deed was executed and delivered to him within sixty days prior to his making the deed on November 30, 1893, to the same lot, to C. H. Autrey, showing that the date of the first mentioned deed, Exhibit No. 22, has been changed.

Mr. PEARSALL: I tender a deed from M. M. Blanton to C. H. Autrey, Exhibit No. 21.

Mr. ERWIN: No objection to the admissibility of this deed, objection to its effect reserved for argument.

Mr. PEARSALL: I tender Exhibit 20, a deed from C. H. Autrey to D. A. Autrey.

Mr. ERWIN: I object to this deed because there is no proper proof made of its execution, said deed having also been improperly admitted to record, there being only one witness to the deed.

Mr. PEARSALL: I offer a deed from D. A. Autrey to D. M. Reeves, Exhibit No. 19.

Mr. ERWIN: No objection to the admissibility of the deed. Objections to its effect being reserved for argument.

Mr. PEARSALL: I tender certified copy of deed from D. M. Reeves to H. T. Crawford. We made proof of the loss of the original at the examination held, as shown by the record on page 181. Exhibit No. 18.

Mr. ERWIN: I object to this certified copy. The certificate has no internal revenue stamp on it.

365 *Agreement as to Exhibit No. 20.*

Counsel for the defendants, Crawford and Ashburn, desiring now to withdraw deed Exhibit No. 20, which has been objected to by counsel for the complainant on the ground that the said deed is not proven, and has not but one witness to it, and has been improperly recorded, and the said withdrawal being for the purpose of having said C. H. Autrey, the grantor, properly execute or acknowledge said deed at this time, and for the purpose of then having the deed recorded for admission in evidence and again offering it, and complainants' counsel objecting to said withdrawal and contending that the said defendants have no right to re-execute said deed as aforesaid at this stage of the proceedings to affect the evidence in the cause.

It is agreed between counsel that if the said defendants have the legal right to withdraw the deed and have it re-executed as aforesaid, and recorded and offered in evidence so as to affect the evidence, that same shall be considered as having been done, the complainant reserving all objection otherwise to the admissibility of the deed on the ground that it is not executed, acknowledged or proven and recorded until this date.

Mr. PEARSALL: This deed has been in the files of the Court since its introduction at the hearing on the rule *nisi* at Macon.

Mr. ERWIN: That is admitted.

WILLIAM W. ASHBURN, called for the defendants, duly sworn, testified:

Mr. PEARSALL:

Q. Where were you living in the year 1890? A. Living in Eastman, Georgia.

Q. How long have you lived in Eastman? A. Since '71. I moved there in the latter part of '70.

Q. When did you move from Eastman, and where? A. I moved from Eastman to Atlanta.

Q. When? A. '95, I believe, '94 or '95.

Q. When did you first move to Colquitt County? A. I moved here a little over a year ago.

Q. When was the first time that you visited Colquitt County for any purpose, about what time? A. I think it was some time
366 in '88 or '89, somewhere along there when I first came to Colquitt. The first time '88 probably or '89 somewhere along there.

Q. Did you ever buy any lands in this county? A. Yes, sir.

Q. From whom did you buy? A. I bought from various parties.

Q. When did you first purchase? A. Why I think my first purchase was from McIntyre and Watson.

Q. A. T. MacIntyre, Jr., and A. M. Watson? A.. Yes, sir.

Q. What business was A. T. MacIntyre, Jr., then engaged in? A. Law practice.

Q. Where? A. Thomasville.

Q. What was his character and reputation at that time so far as you knew or could learn? A. Good so far as I knew.

Q. What was his financial standing so far as you knew? A. His financial standing, I understood, that he was in a good fix financially.

Q. What was the reputation of A. M. Watson for character and financial standing? A. Good.

Q. How many times had you been to the county before you made the purchase from MacIntyre and Watson? A. I think two or three times, I think possibly a couple of times.

Q. Did you stay for any length of time when you were here? A. Only a day or t-o at a time, probably a couple of days, I don't remember exactly.

Q. Were you looking over the character of the land that you contemplated buying from MacIntyre and Watson? A. My first trip here I came to buy lands. I did not find the party I was expecting to

buy from, and I went off, and it was two or three years before I came back again at all. That as my business though both trips, looking after lands.

Q. The purchase from MacIntyre and Watson involved about how many acres, the first purchase? A. Something over 17,000.

Q. What was the consideration that you paid for it? A. Three dollars twelve and a half cents an acre.

Q. Did that include the timber in its virgin state? A. Yes, sir.

Q. Turpentine and timber privileges together with the land? A. Yes, sir; fee simple, that was in '90.

Q. Before you made the purchase or consummated the
367 sale, did you have the original title papers submitted to some one, to any attorney? A. Yes, sir.

Q. To whom did you have the title papers exhibited? A. Judge Pope of Albany.

Q. D. H. Pope of Albany? A. Yes, sir.

Q. Did he look over these title papers that you got from them? A. Yes, sir.

Q. What was his opinion to you, did he advise you that you were getting a good title to all these lands you bought from MacIntyre and Watson? A. Except two lots, I think two lots he did not, 307 was one of them, and 400 was possibly another.

Q. Did you accept those lots? A. Yes, sir. I bought those lots because the parties seemed to be in possession. Pope told me, he says the title is all right to all the lots, except those, and they seem from the papers that they represent them to be in possession if you want them, I would not pass the title as being good.

Q. The other lots did he approve? A. He said the other titles were all right. He said there might be some little technicalities, but it was an easy matter for Tom to correct them.

Q. Tom who? A. A. T. MacIntyre, Jr. I asked him this question, Judge, would you accept the title, buy them and put your money into it yourself. He said I would if I wanted the land.

Q. What was the character and reputation of Judge Pope for carefulness and ability as a lawyer? A. It was fine.

Q. Had you ever had any business experience with Judge Pope before? A. In a way. Me and my friends. I bought lands in Dooly County and we had him to examine the titles up there, previous to coming down here. I bought quite a lot of land up there. Mr. Betts got him to examine the title to it.

Q. Was there any lawyer living in Colquitt County at that time? A. Colquitt County. O yes, I suppose so.

Q. Do you know what lawyer it was? A. Now I am not sure there was any lawyers here. Being the county site I just supposed there was. I don't remember though really.

Q. There was no railroads in the county at that time was there? A. No, sir.

Q. The price you paid for the land was how compared with others lands at that time? A. Very high. Everybody look like was kicking me for paying such a big price. They did not see how in the world I would ever get out on it.

368 Q. The population of the county was small at the time? A. O yes, very thinly settled.

Q. At that time did you know H. T. Crawford? A. No, sir.

Q. Or John McMullen? A. No, sir.

Q. Or Jennie L. Graves, Ida J. Graves and Minnie C. Graves? A. I never had heard of them that I remember.

Q. Did you know at that time A. T. MacIntyre, the firm of MacIntyre and MacIntyre, was representing Ida J., Minnie C. and Jennie L. Graves? A. No, sir.

Q. Did you know whether or not he had in his possession any of the title papers of either of these ladies? A. No, sir.

Q. You paid then the full value for this property? A. I thought so. I thought it was a pretty big price. Everybody thought so. The man I sent down here to take an interest with me, when he came down he backed out that night and would not go into it. I went into it myself.

Q. Why? A. He said it was too big a price.

Q. At the time you purchased the interest in lot 353 in the 8th district, you knew nothing about MacIntyre's relation, if he had any relation with either of these ladies, Mrs. Graves? A. No, sir. I only purchased half the lot from McIntyre.

Q. You never heard of neither one of these ladies? A. Never had.

Q. Have you had any connection up until the filing of this suit in April 29, 1899? Did you know or ever hear of any connection between H. T. Crawford, John McMullen, or William McMullen, had you ever heard of any trade that was made between John McMullen and William McMullen and H. T. Crawford, if there was a trade made do you know of anything about that, before the trade was made? A. No, sir.

Q. Did you ever hear of it? A. I have heard it talked of since this suit was commenced.

Q. Before that? A. Before that I had never heard anything about it.

Q. You had no interest in that transaction did you, if there was such a transaction? A. None whatever.

Q. You have no interest in any of this land except an interest in this lot 353? A. No, sir.

Q. Lots 354, 384, 383? A. No, sir.

Q. You have no interest, never had any interest prior to the filing of this suit in either of those lots? A. No, sir.

Q. Except 353? A. Except 353, that's all.

369 Q. You purchased these lands, your interest in 353 in good faith, without any knowledge, idea or any suspicion of anything wrong with it? A. None whatever. It seemed to be straight; at least I taken Judge Pope's word, he passed on it.

Q. And the character of MacIntyre and Watson was such that you could believe that they were dealing honestly in this matter? A. Yes. I guess they stood as high as any men in Thomasville. They did so far as I know. So represented to me.

Q. You have no connection with John McMullen, William McMullen, in any way? A. Never did have.

Q. You have got no interest in the result of this litigation except as to your interest in this lot 353? A. None whatever.

Q. Directly or indirectly? A. No, sir.

Q. You knew nothing about any suit that this Mrs. Graves had with any other parties about any other of their lands? A. Not until this suit commenced.

Q. You know nothing about the transaction beween Crawford and McMullen and MacIntyres and of these women, relating to lot 383? A. I know nothing in the world about their trade at all, only what I heard since the suit commenced

Q. I believe you sold the saw mill timber on the north half of lot 353? A. Yes, sir.

Q. To whom did you sell? A. I sold it to the Union Lumber Company.

Q. How much more did you sell the Union Lumber Co. at the time? A. Between thirty and thirty-one thousand acres.

Q. What did you get for it, what price per acre? A. One dollar and twelve and a half cents per acre.

Q. Had you previously leased the turpentine timber on it? A. Yes, sir.

Q. How much did you get for the turpentine timber? I mean on this lot 353? A. $1.25, I believe. I am not positive about that. I could refer to my books. I am not positive what I did get for that lot. It went in with some other timber.

Q. Have you paid taxes regularly on this lot 353 since you purchased it in 1890? A. Yes, sir.

Q. You knew nothing about any claim of Mrs. Graves at the time you purchased it? A. O, no sir.

Q. When was the first time you heard that they made any claim to it, this lot 353? A. Why since they commenced this suit in the United States Court.

370 Cross-examination.

Mr. ERWIN:

Q. In this purchase you made from MacIntyre and Watson, how many acres did you say was in it? A. Something over 17,000 acres.

Q. Was the land all in Colquitt County? A. Yes, sir.

Q. How far from Moultrie did it range? A. I suppose ten miles, ten or twelve.

Q. At that time was there any railroads to Moultrie? A. No, sir; was not a railroad in the county.

Q. No railroad in the county at that time? A. No, sir.

Q. The value of lands has gone up very much since that time, hasn't it? A. O, yes, increased in value; yes, sir.

Q. A number of railroads in the last few years have been built through here? A. Yes, sir.

Q. How many railroads have you now from Moultrie? A. Two.

Q. You have a road that runs from Moultrie to Pidcock, that is one? A. Yes, sir.

Q. You have the road, the Thomasville, Tifton & Gulf, which in one direction goes out from Moultrie to Thomasville and the other

direction goes to Tifton, where it connects with the Georgia Southern? A. That's right; yes, sir. Two roads, one from Tifton to Thomasville, one from Pidcock to Albany. You can call them four roads or two roads.

Q. You have another road that runs from Moultrie to Sparks? A. No, sir; that has been taken up.

Q. You did have a timber road from——? A. They used to have a timber road. They had a mill.

Q. Until the last year or two? A. They delivered their lumber over that.

Q. It has been taken up in the last year or two? A. Yes, sir; the last few years.

Q. There has been a great development of the timber industry in the last five or six years, hasn't there, in this county? Great development of the lumber interests, I mean, lumber and turpentine through this county in the last six or seven years? A. Oh, yes; it has been quite a business.

Q. When you had the titles to that purchase from MacIntyre and Watson looked into, did you submit the papers to Mr. Pope at Albany? A. No, sir; he came to Thomasville.

Q. He came to Thomasville and looked them over there? A. Yes, sir.

371 Q. MacIntyre submitted what papers they had to him, there at Thomasville? A. He got up his deeds and submitted them to Pope. He went through them.

Q. He did not make any investigation up here, did he? A. As to the records?

Q. Yes? A. No, not that time.

Q. When you purchased from Watson and MacIntyres, you had bought an undivided half interest in lot 353, hadn't you? A. They only owned half the lot. They did not sell me but half the lot.

Q. Look at the deed itself, it reads an undivided half of lot No. 353? A. You can consider it as you please. It was considered the south half, I believe is the way of it, my deed reads, I am not sure, it may read that way.

Q. South half or north half? A. I think it is south half, that is my recollection, south half.

Q. You made a lease of your interest in lot 353 to Hightower? A. Yes, sir; it went in with the other lands.

Q. Didn't you lease the north half of it? A. I think I did. I think I bought the north half from Mr. Crawford.

Q. Aren't you mistaken about that, didn't you take the deed from Crawford to Ashburn and Clark after this suit was commenced on February 24, 1900? A. I believe you are right about that. I think I am too fast there. I think that is correct. That's right. I have so much dealings I cannot remember all those things exactly. That's correct.

Q. Now, if your deed from Watson and MacIntyre calls for an undivided half interest in lot 353, and you leased the upper half of that lot to Hightower, how did you get it divided—the undivided half interest? Did you have any proceedings to divide it? A. I

think it was all divided before. I think it was an agreed upon line, I judge, between those parties that owned it before I got it.

Q. You don't know how it was? A. No, at any rate it seemed my part as the south half of the lot.

Q. South half? A. South half.

Q. You said a minute ago you thought it was the north half? A. I said south half. I got the thing turned right. The north half I got from MacIntyre and Watson, the south half I got from Crawford. The north half is right. I got it from MacIntyre and Watson.

Q. We want you to be correct about that. It is important. Your answer to the rule *nisi* in this cause states that you bought the north half from MacIntyre and Watson? A. That is correct. That is right.

372 Q. The deed itself shows you bought an undivided half interest from Watson? How did you get it divided? A. It seems to me there was an agreed upon line that the people understood that owned the other half, that mine was the north half and the other party owned the south half. I suppose it was an agreed upon line before I bought it.

Q. Did you have any agreement with Mr. Autrey about dividing that, or Mr. Blanton or Mr. Cooper, either one, about dividing that lot 353 into two parts, you taking the north half and Autrey taking the south half? A. I did not. I think it was all agreed on before I got it even. That agreed upon line was before I came in possession of it. It seemed to be understood that the north half was the part I was to get.

Q. Now, you had leased the north half to Hightower for the Union Lumber Company at that time not incorporated, and Mr. Hightower was enjoined in this suit from cutting timber, etc., on the north half as tenant under you and the Union Lumber Co. also; now, since that time, have you ever allowed anybody to cut timber off that north half of lot 353? A. No, sir; nothing said to me about it.

Q. Do you know whether or not it is cut off—the timber on the north half of lot 353? A. I don't to my knowledge. I have not been through it that I know of in quite a while.

Q. Don't you know that Crawford and Corbett have cut the timber off of the north half of that lot under a transfer of that lease from the Union Lumber Co.? A. They may have done it.

Q. Since the Union Lumber Co. has been enjoined in this case, don't you know that? A. They may have cut it.

Q. Has it come to your knowledge that they have? A. I have heard that they have cut it.

Q. Now, since this suit has been filed, haven't you taken a warranty deed from Crawford to the south half of lot 353? A. I don't know whether it was since this suit was filed or before.

Q. Well, on February 24, 1900, hadn't a lease already been made from Mr. Crawford to Ashburn and Clark, February 24, 1900, to the south half of lot 353? A. Yes, sir.

Q. That is true? A. That's true.

Q. Since this suit has been filed, did you not on August 28, 1899, take a lease from H. T. Crawford for the turpentine privileges on lot 383 in this suit? A. Me?

Q. That is to W. W. Ashburn and Z. H. Clark? A. No, sir; not a turpentine lease; no, sir.

Q. I have in my hand what purports to be a certified copy
373 of an indenture made the 28th of August, 1899, between H. T. Crawford and one W. W. Ashburn and Z. H. Clark for the turpentine privileges on a number of lots including 383 in the 8th district of Colquitt County, 28,000 boxes. Did you take that lease, Mr. Ashburn? A. Yes, sir; I thought you said 353.

Q. 383? A. That's right.

Q. You carried on the turpentine farm since then? A. Up until last year; yes, sir.

Q. Then since that time hasn't the timber been cut off of that lot 383? A. I think it has.

Q. Wasn't that cut down by Corbett and Crawford? A. I think Mr. Corbett cut it. I don't think Mr. Crawford had a thing to do with it.

Q. Are you interested in the Union Lumber Company? A. No, sir.

Q. Isn't it true, Mr. Ashburn, that a number of those lots that you purchased from Watson and MacIntyre were lots also involved in that Kilgore litigation, the one in which some deed is taken out of this record to be put in. You are in that suit also, are you not—the Kilgore suit, pending in the United States Circuit Court? A. It seems so.

Mr. PEARSALL: I object to that question as irrelevant, immaterial and it does not throw any light upon any issue involved in this litigation and there is no question whatever in issue that is involved in this litigation, and that there is higher and better evidence of what is involved in the other Court record.

Q. Those lots that you are made defendant about in the Kilgore litigation were some of them lots included in that same deed from MacIntyre and Watson, were they not? A. I do not know what lots they have got in their suit? I have never heard them all.

Q. You put in that same deed that you put in this case? A. What deed?

Q. Watson and MacIntyre to yourself? A. What lots have they got in that suit?

Q. You put in that deed to show your title? A. The deed will show for itself.

Mr. PEARSALL: 179, 50, 75, 379, 360, 373, 351, 192, 55, 95, 90, 87, 89, 86, 121, 102, 130, 147, 177—— A. I know 360. I
374 bought that from MacIntyre and Watson.

Q. At the time you came down to this section here to buy those lots of land from MacIntyre and Watson, you say you had been here on one trip before, about three years before? A. I had been once or twice before that.

Q. And when you came down, you were down a day or two each time? A. Yes, sir. I don't remember exactly how long.

Q. You had not lived down in this section? A. No, sir. I sent a man down here to examine the lands, titles, etc. My man was

down here a month near about. I don't know how long he was here. He was here quite a while.

Q. Will you please produce the original lease to turpentine privileges on lot 383, from H. T. Crawford to Ashburn and Clark, dated August 28, 1899, or will counsel consent that a certified copy from the record be introduced in place of the original?

Mr. PEARSALL: I have no objection.

It is agreed by counsel that plaintiff may put in evidence certified copy from the record of the clerk's office, Colquitt County, of the lease referred to, dated August 28, 1899, waiving the production of the original. To be marked Exhibit No. 62.

Q. Will you produce the deed from Crawford to Ashburn and Clark, dated February 24, 1900, for south half of lot 353 or will counsel agree that a certified copy from the record of the clerk's office of Colquitt County be introduced in its place.

Mr. PEARSALL: We are willing to admit if it is true that a lease was made. I don't wish to burden the record with all those things unless there is some special reason for it. We will insist that it is utterly irrelevant to any issue involved in this matter.

Mr. ERWIN: Will you waive the production of the original and admit that, subject to objection as to its relevancy?

Mr. PEARSALL: Yes.

Marked Exhibit No. 63.

375 Mr. ERWIN: I tender those certified copies in evidence. I have not got them here, but as soon as the clerk makes them out for me.

Mr. PEARSALL: We object to the introduction of those certified copies or originals as being irrelevant and immaterial to any issue involved in this case.

Mr. ERWIN: Now, Mr. Pearsall, will you please produce the deed from the Union Lumber Company to Corbett and Crawford, a firm composed of R. J. Corbett and H. T. Crawford, dated the 31st of October, 1900, I have here a certified copy from the record of Colquitt County. I call on you to produce the original or in lieu thereof you consent to the introduction of the copy from the record.

Mr. PEARSALL: I have never seen the original, never heard of the original being in existence, know absolutely nothing about it. I do not represent Mr. Corbett and Crawford. I represent Mr. Crawford in this matter.

Mr. ERWIN: You represent Mr. H. T. Crawford?

Mr. PEARSALL: Yes.

Mr. ERWIN: I tender in evidence that certified copy of the deed from the record of Colquitt County.

Exhibit No. 64.

Mr. PEARSALL: We object to the introduction of the certified copy until the original is accounted for. This is the first notice we have ever had that there was an original. We know nothing about it, and we object to it as irrelevant and immaterial to any issue involved in this litigation.

Mr. ERWIN: I call on Mr. Pearsall, counsel for H. T. Crawford to produce the lease dated December 26, 1899, from H.
376 T. Crawford to R. J. Corbett for timber for saw mill purposes on lot 383, recorded in the clerk's office, Superior Court, Colquitt Co., Ga., June 11, 1900.

Mr. PEARSALL: I have not that in possession and don't know anything about it.

Q. Will you consent to the use of a certified copy from the record?

Mr. PEARSALL: I have got no objection to a certified copy subject to the objection to the introduction of original or certified copy as being irrelevant and immaterial.

Q. Did you waive the production of the original.

Mr. PEARSALL: I don't know anything about the originals.

Cop- Marked Exhibit No. 65.

For complainants:

HENRY T. CRAWFORD, recalled by complainants, duly sworn, testified:

Mr. ERWIN:

Q. Was there a paper executed by the Union Lumber Company by J. W. Hightower, vice president, conveying among other things the timber privileges on lot 353 to Crawford and Corbett, H. T. Crawford and R. J. Corbett? A. My recollection is that we got that in a swap. North half of lot 353, saw mill privileges.

Q. That was made 31st day of October, 1900? A. I do not remember the date.

Q. Was the timber cut off under that conveyance on the north half of 353? A. I do not know, sir, whether it was cut under that or not. I had sold my interest before it was cut, if it is cut, while I was in the firm it was not cut.

Q. When was it cut? A. I cannot swear it is cut yet. I have not been over it.

Q. Will you produce the original of that paper, of the
377 paper conveying that interest in lot 353 from the Union Lumber Company by Hightower to Corbett and Crawford? A. No, sir; I have not got it. I expect Corbett has that paper, the firm.

Q. Didn't you state that the timber had been cut off of the north half of lot 353 to-day, didn't you state it to-day, this morning, to Mr. Callaway? A. I may have said something like this that I had understood it was cut off. (To Mr. Callaway:) Do you state that I said any more than that. I am very positive about what I said.

Mr. CALLAWAY: So am I. We will not have any trouble about it.

Q. Now, was there a lease made by H. T. Crawford and R. J. Corbett and H. T. Crawford for the saw milling the timber on lot 383, on the 26th day of December, 1899? A. I do not remember exactly the dates, but I sold Mr. Corbett a half interest in the saw mill privileges on the lot I owned.

Q. Where is that deed? A. I suppose he has it. I signed it up and delivered it to him, the lease rather.

Mr. ERWIN: We have a certified copy of a deed purporting not to convey a half interest but being a conveyance from you of the whole interest to the firm of R. J. Corbett and H. T. Crawford, that was the joint interest in 383?

A. That was an undivided half interest.

Q. Hasn't the timber been cut on lot 383 now? A. I am not certain. I have been informed it has. I don't live down there. I have not been over the woods at all. If I had been through the woods I could state whether it had or not.

Q. What was the firm of Corbett and Crawford engaged in? A. Corbett and Crawford?

Q. Yes? A. In the saw mill business.

Cross-examination.

Mr. PEARSALL:

Q. Do you remember when you sold your interest in the firm of Corbett and Crawford? A. I don't remember just what date. It has been something over two years I think. It was while we operated down at Cooper, that mill down there.

Q. And you say the north half of 353 was received in ex-
378 change, with the Union Lumber Co.? A. Yes, sir, we exchanged some timber right about—or some little time before I sold my interest, was my recollection.

Q. Corbett lives in this county, doesn't he? A. Mr. Corbett lives at the mill, two miles below here.

Q. He has all the papers pertaining to that transaction? A. All the conveyances that belonged to Corbett and Crawford I turned over when I sold my interest.

Q. How long were you in the firm, do you remember? A. I don't remember exactly, something like six or eight months, I think, I owned an interest in it.

Mr. PEARSALL: Mr. Erwin, I want to examine Mr. Crawford on some rebuttal testimony, on the evidence introduced at Macon by the complainants. It has been some time ago. That evidence that was introduced, I just got in possession of a copy of it this morning, and have not had time to look over it. I don't know that we will want to examine him until I can look over it, but if I should it will be only a few questions. I would like the right to do that between now and the time the case is set for hearing. I will submit to you what his testimony will be and see if we can agree on it.

Mr. ERWIN: Of course, any extended examination at the last minute might take me by surprise on matters I would not be prepared to meet. My clients reside in a very distant State.

I would not object to any special matter that was strictly in rebuttal, but anything like new evidence would put me at a disadvantage.

Mr. PEARSALL: It will not be new evidence. It will be strictly matters in rebuttal or in contradiction of evidence of the plaintiffs.

Mr. ERWIN: If you will confine it to that. I want to take an affidavit of the clerk of the Superior Court of Chatham County, Georgia, just simply on the question as to the time W. T. Thompson was notary public, etc.

Mr. PEARSALL: I will agree to that.

379 Mr. PEARSALL: I find a certified copy of the deed to this lot 353 from Rebecca Bruce to Betty Bruce Daniels, that I want to introduce in evidence, if you will waive the accounting for the original, which I would have to do in Thomasville. I omitted to introduce that. It was introduced at the hearing on the rule *nisi*.

Mr. ERWIN: I will waive the production of the original of this if you will waive the production of the original of those deeds which Mr. Crawford states are in the possession of Mr. Corbett.

Mr. PEARSALL: Why, certainly, I will agree to that, so they are in existence. I know nothing about *there* [their] being in existence. Of course, we object to their relevancy and as being immaterial.

Mr. ERWIN: This deed which you now offer, the Bruce deed, Exhibit No. 66. This is informal, in that the date of the record of it does not appear in the certificate of the clerk, nor in the writing above it, but I take it it is all right, as the date is marked on the back of the paper. I make no objection to the admissibility of it; objections to its effect will be reserved for argument.

Examination of H. T. CRAWFORD resumed:

By Mr. PEARSALL:

Q. Did you cut the north half of lot 353 for saw mill purposes? A. No, sir.

Q. Did you have anything to do with it, if it has been cut? A. No, I had nothing at all to do with it.

Q. Received any benefit from its having been cut, if it has been cut? A. No, I had severed my interest with the firm before it was cut, if it is cut.

Examined.

By Mr. ERWIN:

Q. Isn't it true that Mr. Corbett bought you out of the firm? A. Mr. Corbett and myself owned it. I sold to a party that is in with him now. Corbett & Company it is now.

Q. Who was the party? A. I don't know who all compose the concern.

380 Q. Whom did you sell to? A. I sold to R. J. Corbett & Company. I don't know who compose the firm.

Q. You must have got money for it, got some money? A. Yes.

Q. Whom did you get the money from? A. I declare I don't remember, sir, whether Mr. Fields or Mr. Corbett gave me the money or check, whichever it was.

Q. You got out of the firm? A. Yes, the firm paid me for my interest.

Q. If the firm bought from you the privilege of saw milling that timber, you have got the benefit of being bought out? A. I got the price I asked for it, of course; yes, sir.

By Mr. PEARSALL:

Q. The firm of Crawford and Corbett bought from the Union Lumber Company? A. We exchanged timber, and we got that particular piece.

Q. That is 353? A. Yes, sir.

Q. Then you sold out your interest in the firm of Corbett and Crawford? A. To R. J. Corbett & Company.

Q. And they may have cut this timber? A. They may have cut it all, I don't know. I have been informed it is cut, but I am not positive about it.

By Mr. ERWIN:

Q. There is also lot 383 that you were turpentining at the time suit was filed against you? A. Yes, sir.

Q. Now, you sold that to Crawford and Corbett first and then sold out your interest in that? A. No, sir; what I liked to run the turpentine out myself I sold to Ashburn and Clark.

Q. And the timber? A. Saw mill privileges, and after that I sold an undivided half interest to R. J. Corbett, and I later sold my undivided half interest to R. J. Corbett & Company; 383.

Q. They cut off the timber for saw milling? A. Yes, sir.

ROBERT J. CORBETT, called for the complainant, duly sworn, testified:

Direct.

(Mr. ERWIN:)

Q. Were you a member of the firm of Corbett & Crawford? A. Corbett & Crawford. This is a copy of a lease the Union
381 Lumber Company made to Corbett & Crawford, as well as I remember. That's the way it reads.

Q. Has the timber been cut off the upper half of 353 since this deed or lease from the Union Lumber Company to Corbett & Crawford? A. Yes, sir; it has been cut since then.

Q. This deed purports to have been made on the 31st day of October, 1900. When was the timber cut on the upper half of 353? A. I don't think——

Q. That's the deed you have just looked at; that included the timber privileges of 353, on which there was 265 acres, the upper half of the same lot on which the still was, Ashburn's still at Cooper, where the station Cooper is, where Crawford had his still, the upper part of lot 353. A. Oh, yes; that is cut; we cut that.

Q. The firm of Corbett and Crawford cut it? A. No, Mr. Crawford had sold out at that time, to Mr. H. G. Fields. It was R. J. Corbett & Company.

Q. The lot was first conveyed by the Union Lumber Co. to H. T. Crawford and yourself, as Corbett & Crawford? A. Yes, sir.

Q. And then Crawford went out of the firm by selling his firm interest? A. Yes, sir; his interest, one-half interest.

Q. Did he made a deed, make a firm sale, sell it his interest, how

was that done? A. I cannot be positive. It was a matter between him and Mr. Fields. I could not say.

Q. Do you know whether he assigned his interest or made a deed to it? A. I could not answer that question.

Q. You and Fields, as Corbett & Company, cut the timber off of the upper part of lot 353, since this deed of the 31st of October, 1900? A. Since that lease was made, the timber has been cut off since then.

Q. Now, then, H. T. Crawford made a lease to R. J. Corbett & H. T. Crawford for saw milling the timber on lot 383; that is, the lot diagonally from lot 353 in the southwest direction; did he cut the timber off lot 383 since the deed of June 11, 1900? A. That timber has been cut since Mr. Crawford went out of business. R. J. Corbett & Co. cut that timber.

Q. When Fields came in and Crawford went out of that firm, who paid the money to Mr. Crawford for his interest in it? A. Mr. Fields did.

Q. Was it paid out of the firm money or direct by Mr. Fields? A. Directly by Mr. Fields, as well as I remember. Fields bought his interest. It was a half interest in the business.

382 Q. Do you know what he paid him for it? A. No, sir; I could not answer it, the exact amount he paid for Mr. Crawford's half interest.

Q. In dissolving that firm Corbett and Crawford, didn't you have any dissolution agreement, or anything of that sort, between you and Mr. Crawford, any writings? A. I don't think we did. I don't think there was any.

Q. He just simply walked out, without paying you anything, and somebody else walked in, you had deeds to land, and there was no division of them by deeds nor anything? A. He made Mr. Fields a contract or deed to his half interest in the business of R. J. Corbett & Company.

Q. Where is that contract? A. I suppose it is on record, or Mr. Fields has it at Hampton, Georgia.

Q. Hampton, Georgia? A. Yes.

Q. You have not got a copy of it? A. No, sir.

Q. What kind of showing have you got that Mr. Crawford is not still interested in that firm? A. Now just like he was?

Q. You did not pay him any money, you have not got any dissolution of any contract between you; what have you got to show that there has been a dissolution of that firm? A. Between Mr. Crawford and myself?

A. [Q.] Yes. A. I haven't anything at all.

Q. You do not know what was paid Mr. Crawford? A. No, sir; I could not tell you the exact amount. As well as I remember, it was something like $6000. I will not say the exact amount. I don't remember what it was.

Q. Are you saw milling around here now? A. Yes, two miles south of here.

Q. Where have you got a saw mill, at Cooper? A. No, sir; about a mile and a half this side of Cooper, between Moultrie and Cooper.

Q. What is timber that has been turpentined worth, in its normal state, along the line of railroad, after it has been turpentined for sawing purposes? A. That depends upon the size of the timber.

Q. Good timber, such as there is through this country, when it has not been cut off? A. Average timber is worth $3.25 to $4 an acre.

Q. Didn't Mr. Stetson pay $5 for timber recently? A. It has been reported. I could not say what he paid. It has been reported he paid something like $5 an acre. It is the only record that I have heard.

383 Cross-examination.

(Mr. PEARSALL:)

Q. The present price is something like $3.25 to $4; that is the price to-day. A. Yes, sir; in other words, about 1,000 stumpage; we average this timber 35; upon average timber, what I am speaking of.

Q. The price of timber is higher to-day than it was three years ago? A. Yes, sir.

Q. It is worth a quarter as much more as it was three years ago? A. Yes, I guess it is. The price of lumber has increased.

Q. What is the firm of R. J. Corbett & Co. worth? A. We have $30,000 paid into the business.

Q. It is not a corporation? A. No, sir.

Q. What is Mr. Fields worth, the company of the firm? A. H. G. Fields, I think he is worth about $25,000.

Q. What are you worth? A. About the same thing. Still another man in the firm, Mr. A. J. Henderson, of Hampton, Georgia, interested in the business.

Q. What is he worth? A. I hardly know what he is worth. I think he is worth 75 or $100,000; somewheres along there.

Q. The dissolution between you and Mr. Crawford, you simply took Mr. Crawford's word? You understood he was out of it? A. Yes, sir.

Q. He makes no claim on you, has made no claim to any interest in the firm? A. None whatever since he sold to Mr. Fields.

HENRY T. CRAWFORD, recalled for the complainant, testified:

(Mr. ERWIN:)

Q. Mr. Crawford, you stated a while ago the money was paid to *out* out of the firm of Corbett and Company when you dissolved? A. No, sir; I don't think I did. I said I did not remember which handed me the check, Mr. Corbett or Mr. Fields. Mr. Fields, as I stated, bought my interest in the *form* [firm] of Corbett & Crawford.

Q. Didn't you state at first you did not really know whom you made the trade with? A. No, sir.

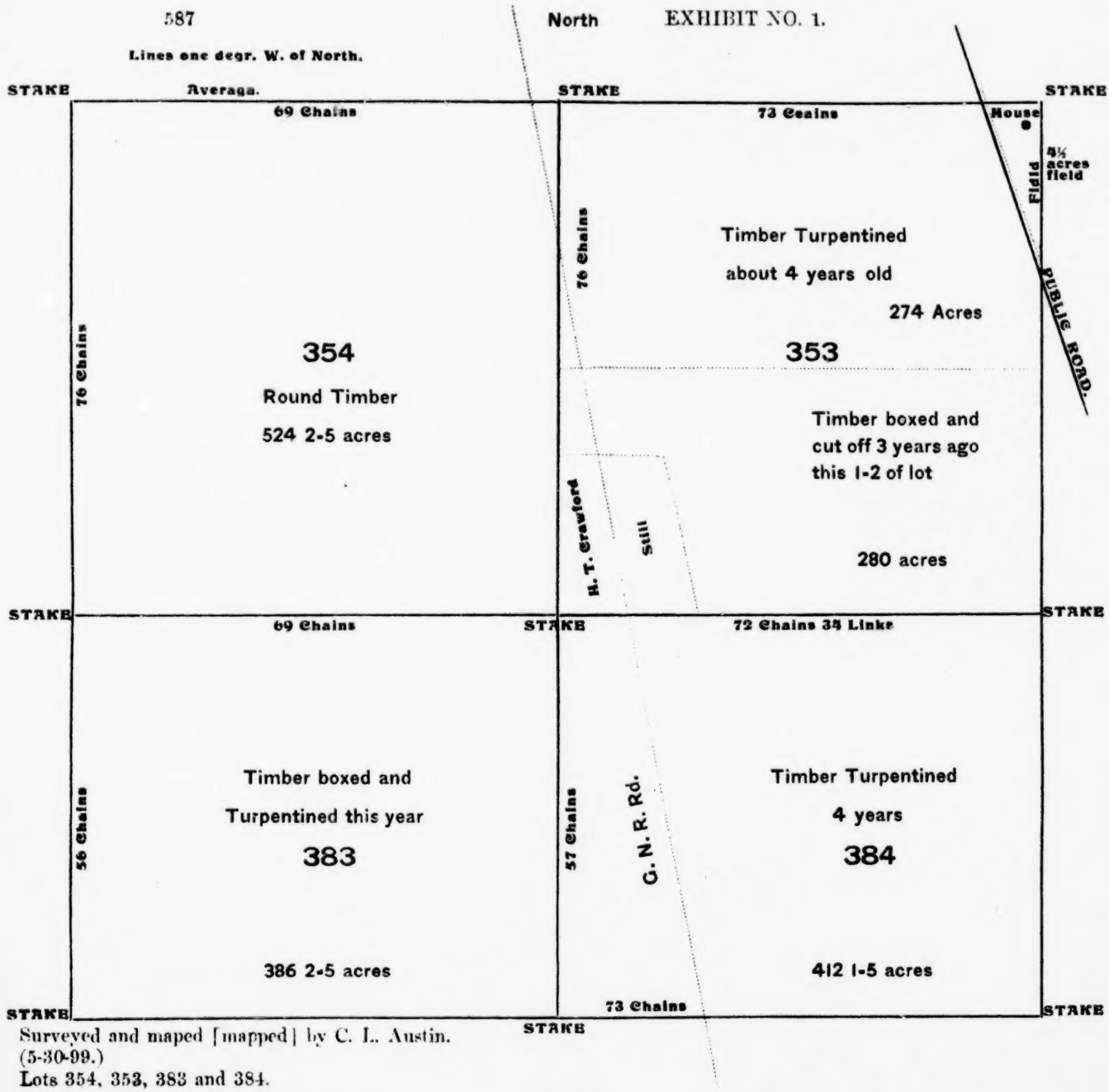
Q. Did you put the trade in writing? A. Yes, sir.

Q. Where is your contract? A. Contract—straight out
384 conveyance, lease of my undivided one-half interest in the Corbett and Crawford mill business. I am pretty certain it was put on record.

587

North

EXHIBIT NO. 1.



Surveyed and maped [mapped] by C. L. Austin.
(5-30-99.)
Lots 354, 353, 383 and 384.

Q. Down stairs? A. Yes, sir.

Q. You have not got the original? A. I delivered it to Mr. Fields, the man I sold it to. I gave him the conveyance.

Q. You did not keep any copy? A. Of course not.

Q. What did Mr. Fields pay you? A. I don't remember; it is in the paper; it is on record, I suppose; something in the neighborhood of $6,000, is my recollection. I cannot remember. If I could I wouldn't mind telling you. I have no reason to withhold it.

Q. Who witnessed the paper? A. I don't remember.

Q. Was it witnessed? A. It was just a legal paper signed up by myself, and witnessed by an officer, is my recollection.

ROBERT J. CORBETT, recalled:

By Mr. ERWIN:

Q. Do you remember cutting lot 383 in 1902, the whole lot? A. Part was cut last year and part the year before.

Q. When was the timber on lot 353, the upper part of that lot, cut? A. The half lot the still is located on?

Q. Yes. The upper half of the lot, on which the still is located on the lower half? A. As well as I remember, it was cut about two years ago.

Q. About 1901? A. Yes, sir; as well as I remember, 1901. I cannot carry the dates, the time we cut this timber.

Q. Is there anybody cutting timber on lot 354, which is just north of that whole body you cut there? A. I don't think there is. I have not noticed any one cutting on that.

(Here follows Exhibit No. 1, marked p. 385.)

386 EXHIBIT No. 3.

STATE OF GEORGIA.
Thomas County:

This indenture, made this eighth day of June, in the year of our Lord one thousand eight hundred and fifty-five, between Joel S. Graves of the first part, now of Thomas County, and State aforesaid, and Cyrus S. Graves, of the same place, of the second part, witnesseth: That the said Joel S. Graves of the first part, for and in consideration of the sum of twenty-nine hundred and forty dollars, lawful money of these United States, to him in hand paid by the said Cyrus S. Graves of the second part, the receipt whereof is hereby acknowledged, at and before the sealing of these presents, hath sold, bargained and delivered, and by these presents doth sell, bargain and deliver unto the said Cyrus S. Graves, of the second part, all these lots or parcels of land lying in the eighth district of originally Irwin County, now Thomas County, in said State, being six lots in said eighth district, each containing four hundred and ninety acres, as will more largely appear by reference to plots accompanying grants made to Eli Graves. Said lots or parcels of land being known and distinguished as lots numbered three hundred and forty-five (345), three hundred and fifty-three (353), [sold to Dr. Bower;]* three hundred and fifty-four (354), three hundred and eighty-three (383), three hundred and eighty-four (384), and four hundred and thirty-seven (437), in all six lots of land, containing twenty-nine hundred and forty (2940) acres, with all privileges, rights and immunities thereunto appertaining or in any wise belonging unto the said Cyrus S. Graves, his heirs, administrators, executors and assigns in fee simple forever. To have and to hold the within named premises to his or their own sole use and benefit forever. And the said Joel S. Graves of the first part, doth further covenant with and to the said Cyrus S. Graves that he, his heirs, executors, administrators and assigns, will and they shall forever warrant and defend the herein conveyed premises from the lawful claims and demands of all persons whomsoever unto the said Cyrus S. Graves, his heirs and lawful assigns, forever. In testimony whereof, I have hereunto set my hand and affixed my seal, on the day and year first hereinabove written.

[SEAL.] JOEL S. GRAVES.

Signed, sealed and delivered in presence of:

SAMUEL L. MOORE,
SAMUEL A. GRAVES.

[*Words enclosed in brackets printed in red ink in copy.]

387 GEORGIA,
Thomas County.

Personally appeared before me, Torquil McAulay, a justice of the peace within in and for said county, Samuel A. Graves, who, after being duly sworn, deposeth and saith that he saw Joel S. Graves sign the within deed for the purposes therein contained, and that he saw Samuel L. Moore sign as a witness, and signed as a witness also himself.

SAMUEL A. GRAVES.

Sworn to and subscribed before me this 11th June, 1855.
TORQUIL McAULAY, *J. P.*

GEORGIA, *Thomas County:*

CLERK'S OFFICE SUPERIOR COURT, *June* 11, 1855.
This deed is recorded in book of deeds F, on page 677.
JARED EVERITT, *Clk. S. C.*

GEORGIA, *Thomas County:*

In person appeared before me Samuel L. Moore, who being duly sworn, deposeth and saith that he saw Joel S. Graves sign, seal and deliver the within and foregoing deed, for the purposes therein mentioned; that he saw Samuel A. Graves sign the same as a witness thereto, and deponent says further that he subscribed the same as witness thereto.

SAML. L. MOORE.

Sworn to and subscribed before me this March 30, 1889.
WILLIAM D. MITCHELL,
Judge County Court, Thomas Co., Ga.

(Indorsed on back:) Deed from Joel S. Graves to Cyrus S. Graves. Georgia, Colquitt County. Office Supr. Court. Recorded in Book C, D-R, pages 409 and 409, April 2nd, 1889. E. H. Bryan, Clerk, S. C. Recording fee, 50, paid.

EXHIBIT No. 4.

STATE OF GEORGIA, *Thomas County:*

388 This indenture, made this twenty-second day of March, in the year of our Lord one thousand eight hundred and forty-eight, between Eli Graves of the first part, now of Thomas County, and State aforesaid, and Joel S. Graves, now of Jefferson County and State of Florida, of the second part, witnesseth: that the said Eli Graves of the first part, for and in consideration of the sum of two hundred dollars, lawful money of the United States, to him in hand paid by the said Joel S. Graves of the second part, the receipt whereof is hereby acknowledged at and before the sealing of

these presents, hath sold, bargained, conveyed and delivered, and by thse presents doth sell, bargain, convey and deliver unto the said Joel S. Graves of the second part all those lots or parcels of land granted to the said party of the first part by the State of Georgia, lying in the eighth district of originally Irwin County, now Thomas County, in said State, being forty lots in said eighth district, each containing four hundred and ninety acres, as will more largely appear by reference to plots accompanying said grants to said Eli Graves, said lots or parcels of land being known and distinguished as lots numbered two hundred and sixty-eight (268), two hundred and fourteen (214), two hundred and ninety-seven (297), two hundred and forty (240), two hundred and eighty-five (285), two hundred and sixty-nine (269), one hundred and fifty-nine (159), two hundred and twenty-four (224), one hundred and sixty-two (162), two hundred and seven (207), one hundred and seventy-one (171), one hundred and sixty one (161), two hundred and one (201), two hundred and sixty-seven (267), two hundred and four (204), three hundred and seventy-six (376), three hundred and thirty (330), three hundred and forty-five (345), three hundred and eighty-four (384), three hundred and four (304), three hundred and one (301), three hundred and eighty-three (383), and three hundred and forty-nine (349), three hundred and fifty (350), three hundred and fifty-three (353), three hundred and fifty-four (354), four hundred and one (401), four hundred and twenty-nine (429), four hundred and thirty (430), four hundred and thirty-seven (437), four hundred and forty-five (445), four hundred and forty-six (446), four hundred and forty-seven (447), four hundred and seventy-four (474), four hundred and seventy-five (475), four hundred and seventy-six (476), four hundred and seventy-seven (477), and five hundred and twenty-four (524), five hundred and twenty-five(525), and five hundred and twenty-seven (527), in all forty lots of land, containing nineteen thousand and six hundred acres (19,600), with all privileges rights and immunities thereunto
389 appertaining or in any wise belonging unto the said Joel S. Graves, his heirs, administrators, executors and assigns, in fee simple forever. To have and to hold the within granted premises to his or their own sole use and benefit forever; and the said Eli Graves of the first part doth further covenant with and to the said Joel S. Graves that he, his heirs, executors and administrators and assigns, will and they shall forever warrant and defend the herein conveyed premises from the lawful claims and demands of all persons whomsoever unto the said Joel S. Graves, his heirs and lawful assigns, forever. In testimony whereof, I have hereunto set my hand and affixed my seal, on the day and year first herein above written.

[L. S.] ELI GRAVES.

Signed, sealed and delivered in presence of:

MATTHEW MIMS,
TORQUIL McAULAY, *J. P.*

GEORGIA, *Thomas County:*

Clerk's office of the Supr. Court of said County, this the 15th day of March, 1849.

The within deed is recorded in book E, on page 371 of said book.
J. G. DEKLE,
Clk. S. C.

(Indorsed on back:) Eli Graves, deed of conveyance to Joel S. Graves. Georgia, Colquitt County. Office Clerk of Supr. Court. Re-Recorded in book (B), D. R., pages 606 and 7, Aug. 20, 1886. E. H. Bryan, Clerk, S. C.

EXHIBIT No. 5.

Letter of 98/11/10, to Chas. P. Hansell, from Hansell & Merrill, Attys., heretofore printed at page 175.

* * * * * * *

EXHIBIT No. 6.

GEORGIA, *Thomas County:*

This indenture, made and entered into this the second day
390 of November, in the year of our Lord one thousand, eight hundred and fifty-two, between Joel S. Graves, of the State and County first mentioned, of the one part, and James Read, of the same place, of the other part, witnesseth: That the said Joel S. Graves, for and in consideration of the *some* [sum] of one hundred dollars to him in hand paid, the receipt whereof is *heare by* [hereby] acknowledged, hath granted, bargained, sold and conveyed, and doth by the*use* presen*tes* grant, barga-n, sell and convey unto the said James Read, his heirs and assigns, all that tract of land situate, lying and being in the eighth 8 district of Thomas County, known and distinguished in the plan * * * the nomber three hundred and eighty-three (383), and said to contain four hundred and nin-ty acres (490), more or less. To have and to hold the said tract of land to him, the said James Read, his heirs and assigns, together with all and singu*lar* the rights, members and app*ert*ances thare to belonging to the same in any man-er for his own proper use, benefit and behoof for ever in fee simple; and the said Joel S. Graves, for himself, his heirs, executors and administrators, will warrant and for ever defend the right and tit*al* against himself and against the claim of all other persons what so ever. In testimony whereof, the said Graves has *heare* unto set his hand and affixt his seal, the day and year above writ*ened.*

[L. S.] JOEL S. GRAVES.

Signed, sealed and delivered in presen*tes* of:
R. J. MARLOW,
JAMES M. NORMAN, *J. P.*

(Indorsement on back:) Georgia, Colquitt County. Office Clerk Supr. Court. Filed for record Nov. 20, 1890, 1 P. M. Recorded in Book D, page 764, Dec. 13, 1890. E. H. Bryan, Clerk.

(One other indorsement which cannot be read, on account of mutilated state of deed.)

EXHIBIT No. 7.

(On printed form.)

STATE OF GEORGIA, *Bibb County:*

This indenture, made this *sixt* [sixth] day of August, in the
391 year of our Lord one thousand eight hundred and sixty-three, between James J. Read, of the County of Colquitt, of the one part, and Joseph A. Shewmake, of the County of Burke, of the other part, witnesseth: That the said James J. Read, for and in consideration of the sum of sixty-five dollars, in hand paid, at and before the sealing of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, convey and confirm, unto the said Joseph A. Shewmake, his heirs and assigns, all that trac*k*, lot or parc*i*l of land lying and being in the eighth (8) district of Colquitt County, and known in the plan of said district as lot number three hundred and eight- three (383), and said to contain (490) four hundred and nin-ty acres, more or less.

To have and to hold the said bargain premises, with all and singular the rights, members and appurtenances thereto appertaining, to the only proper use, benefit and behoof of him the said Joseph A. Shewmake, his heirs, executors, administrators and assigns, in fee simple; and the said James J. Read the said bargained premises unto the said Joseph A. Shewmake, his heirs, executors, administrators and assigns, against the said James J. Read, his heirs, executors and administrators, and against all and every other person or persons, shall and will warrant and forever defend by virtue of these presents.

In witness whereof, the said James J. Read hath hereunto set his hand and affixed his seal and delivered these presents, the day and year above written.

[L. S.] JAMES J. READ.

Signed, sealed and delivered in the presence of:
J. J. MANNING,
N. B. JACKSON,
N. C. MONROE, *Not. Pub.*

(Indorsed on back:) Deed from James J. Read to Joseph A. Shewmake, to lot No. 383 in the 8 Colquitt County, Georgia.

Georgia, Colquitt County. This deed is recorded in Book (D), page (291), August 20, 1863. Amos Turner, Clerk S. C.

Georgia, Colquitt County. Office Clerk Supr. Court. Filed for record Nov. 20, 1890, 1 P. M. Recorded in Book D, page 765, December 13, 1890. E. H. Bryan, Clerk.

392 EXHIBIT No. 8.

STATE OF GEORGIA, *Chatham County:*

This indenture, made and entered into this the tenth day of July, in the year of our Lord one thousand eight hundred and eighty-eight, between Joseph A. Shewmake, of the County of Burke, State of Georgia, of the one part, and Marshal Hobbs, of the County of Brooks, of the other part, witnesseth: That the said Shewmake, for and in consideration of the sum of one hundred and fifty dollars cash in [hand] paid, at and before the sealing of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed, and doth by these presents bargain, sell and convey unto the said Hobbs, his heirs and assigns, all that tract or parcel of land situate, lying and being in the (8) district of Colquitt County, Georgia, the west half of lot number three hundred and eighty-three, said to contain two hundred and forty-five acres, more or less, known and distinguished in the plan of said district by the number 383. To have and to hold the said tract of land to him, the said Hobbs, his heirs and assigns, together with all and singular the rights, members and appurtenances to unto belonging to the same in any manner for his own proper use, benefit and behoof in fee simple, and the said Shewmake, for himself and assigns, will warrant and defend the right and title against himself and against the claim of all other persons whatsoever.

In testimony whereof, the said Shewmake hath hereunto set his hand and affixed his seal, the day and year above written.

[L. S.] JOSEPH A. SHEWMAKE.

Signed, sealed and delivered in the presence of:
S. C. ROSS.
W. T. THOMPSON,
Notary Public, C. C. Ga.

(Indorsed on back:) Shewmake to M. Hobbs, to half lot No. 383, 8 Dist. Colquitt Co., Ga.

Georgia, Colquitt County. Office Clerk Supr. Court. Filed for record Nov. 20, 1890, 1 P. M. Recorded in Book D, page 766. Dec. 13, 1890. E. H. Bryan, Clerk.

393 EXHIBIT No. 9.

Warrantee Deed (Short Form).

STATE OF GEORGIA, *Colquitt County:*

For and in consideration of the sum of two hundred dollars, cash in hand paid to Joseph A. Shewmake, of the County of Burke and State of Georgia, does hereby grant, bargain, sell and convey unto Isaac M. Wilks, of the County of Brooks and State of Georgia, his heirs and assigns, all east half of lot of land nomber [number]

three hundred and eighty-three, the eight district of said county, said to contain two hundred and forty-five acres, more or less, to have and to hold, with all the rights, members and appurtenances thereto belonging, forever in fee simple.

And the said Joseph A. Shewmake will, and his heirs, executors and administrators shall, the right and title to the property herein conveyed, for [forever] warrant and defend by virtue of these presents, unto the said I. M. Wilks, his heirs and assigns.

In witness whereof, the said Joseph A. Shewmake, hath hereto set his hand and affixed his seal, this the 9 day of April, 1889.

[SEAL.] JOSEPH A. SHEWMAKE.

Signed, sealed and delivered in the presence of us:

J. H. LOWELL,

J. J. NORMAN, *Exo. J. P.*

(Indorsed on back:) Georgia, Colquitt County. Office Clerk Supr. Court. Filed for record October 29, 1890, 10 A. M. Recorded in Book D, page 603, November 11, 1890. E. H. Bryan, Clerk.

EXHIBIT No. 10.

STATE OF GEORGIA, *Colquitt County:*

This indenture made this seventh day of January, in the year of our Lord, one thousand eight hundred and ninety-one, between Isaac M. Wilks, of the County of Colquitt and State of Georgia, of the first part, and R. G. Wilby, of the County of Berrien and State of Georgia, of the second part, witnesseth, that the
394 said party of the first part, for and in consideration of the sum of six hundred dollars, in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey to the said party of the second part, his heirs and assigns, all that tract or parcel of land, situate, lying and being in the eighth district of Colquitt County, Georgia, being the east half of lot of land number three hundred and eighty-three (383), containing two hundred and forty-five acres, more or less.

To *h*have and to hold said bargained premises, together with all and singular the rights, members and appurtenances thereof, to the same being, belonging, or in any wise appertaining to the only proper use, benefit and behoof of him the said party of the second part, his heirs, executors, administrators and assigns in fee simple.

And the said party of the first part, his heirs, executors and administrators, the said bargained premises unto the said party of the second part, his heirs, executors and administrators and assigns, against said party of the first part, his heirs, executors and administrators, and all and every person or persons, shall and will warrant and forever defend, by virtue of these presents.

In witness whereof, the said party of the first part has hereunto set his hand and affixed his seal the day and year first above written.

[L. S.] ISAAC M. WILKES.

Signed, sealed and delivered in presence of:
ALLEN SCARBOROUGH,
W. R. STALLINGS, *J. P.*

(Indorsed on back:) Land Deed, from Isaac M. Wilks to R. G. Wilby. Georgia, Colquitt County. Clerk's office, Superior Court. Left for record Jan'y 8, 1891, 3 P. M. Recorded in Book E, folio 4, Jan'y 12, 1891. E. H. Bryan, Clerk.

EXHIBIT No. 11.

GEORGIA, *Brooks County:*

This indenture made this ninth day of January, in the
395 year one thousand eight hundred and ninety-one, between Marshall Hobbs, of the County of Brooks, State of Georgia, of the first part, and R. G. Wilby, of the County of Berrien, State of Georgia, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of five hundred dollars, to him in hand paid, by the party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, heirs and assigns, all that tract or parcel of land situate and lying in the eighth (8th) district of Colquitt County, State of Georgia, known as the west half of lot of land number three hundred and eighty-three (383), according to the plans of said district. These presents convey two hundred and forty-five (245) acres, more or less.

To have and to hold the said bargained premises, together with all and singular the rights, members and appurtenances thereto, appertaining or belonging to their own proper use, benefit and behoof of the said party of the second part, his heirs and assigns, forever, in fee simple. And the said party of the first part will, and his heirs, executors and administrators shall, the afore granted premises unto the said party of the second part, his heirs, executors, administrators and assigns, forever warrant and defend by virtue of these presents.

In witness whereof, the said party of the first part has hereunto set his hand and affixed his seal the day and year above written.

his
[L. S.] MARSHALL x HOBBS.
mark.

Signed, sealed and delivered in presence of:
W. T. BURGESS,
JACOB REDDICK,
N. P. & E. O. J. P.

(Indorsed on back:) Deed to ½ 383 in 8th Dist. Colquitt County, Georgia, from Marshall Hobbs to R. G. Wilby, Georgia, Colquitt County. Office Clerk Supr. Court. Filed for record Jan'y 13, 1891, 3 P. M. Recorded in Book E, page 14, Jan'y 13, 1891. E. H. Bryan, Clerk.

396 EXHIBIT No. 12.

THE STATE OF GEORGIA,
Colquitt County:

In consideration of the sum of five dollars, to me paid by A. T. MacIntyre, Jr., I, J. Z. Elliott, receiver, under and by virtue of a decree granted in Berrien Superior Court, granted March term, 1894, and in case of Milburn Wagon Co., *et al., vs.* R. G. Wilby, *et al.*, of the County of Berrien, do hereby sell and convey unto said A. T. MacIntyre, Jr., of the County of Thomas, his heirs and assigns, a tract or parcel of land, which is described as follows: Lot of land number three hundred and eighty-three (383), in 8th District of Colquitt County, Georgia, containing (490) four hundred and ninety acres, more or less.

To have and to hold said land and appurtenances unto said A. T. MacIntyre, Jr., his heirs, executors, administrators and assigns, in fee simple.

In witness whereof I have hereunto set my hand and affixed my seal this the 3rd day of July, 1894.

[SEAL.] J. Z. ELLIOTT,
Receiver, etc.

Signed sealed and delivered in presence of:
G. A. HORHAN,
G. W. NEWTON,
Clerk S. C. C. Co.

(Indorsed on back:) Warranty Deed, from J. Z. Elliott, receiver, to A. T. MacIntyre, Jr. Lot 383, 8th Dist., Colquitt Co., Ga. Georgia, Colquitt County. Clerk's office, Superior Court. Left for record July 3rd, 1894. Recorded in Book G, folio 188, July 5th, 1894. G. W. Newton, Clerk.

EXHIBIT No. 13.

GEORGIA, *Thomas County:*

This indenture made and entered into this ninth day of November, A. D. eighteen hundred and ninety-eight, between Samuel L. Hayes, administrator on the estate of A. T. MacIntyre, Jr., deceased, of the first part, and of said State and county, and John McMullen, of the County of Colquitt and State of Georgia, of the second part, witnesseth, that the said party of the first part, as administrator,
397 as aforesaid, by virtue of an order or decree of the honorable the Superior [Court] of said County of Thomas and said

State, authorizing and empowering him as such administrator to sell the lot of land hereinafter described, for and in consideration of the sum of five hundred dollars, to him in hand paid, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey to the said party of the second part, his heirs and assigns, all that tract or parcel of land, situate, lying and being in the (8) Eighth District of originally Irwin, now Colquitt County, State of Georgia, known and distinguished in the plan of said district as lot number (383) three hundred and eighty-three, containing four hundred and ninety acres, more or less.

To have and to hold said tract or parcel of land unto him, the said party of the second part, his heirs and assigns, so far and as the said deceased held the same, forever in fee simple.

In witness whereof the said Samuel L. Hayes, administrator on the estate of A. T. MacIntyre, Jr., hath hereunto set his hand and affixed his seal the day and year above written.

[SEAL.] SAM'L L. HAYES,
Adm'r Est. A. T. MacIntyre, Jr.

Signed, sealed and delivered in presence of:
H. T. CRAWFORD,
C. M. SMITH,
N. P. T. C., Ga.

(Revenue stamp 50c.)

(Indorsed on back:) S. L. Hayes, Adm'r to John McMullen. Georgia, Colquitt County. Clerk's office, Sup'r Court. Filed Nov. 11, 1898, 9 A. M. Recorded in Book "K," page 412, Nov. 14, 1898. G. W. Newton, Clerk.

EXHIBIT NO. 14.

GEORGIA, *Thomas County:*

The indenture, made this the ninth day of November, in the year one thousand eight hundred and ninety-eight, between John McMullen, of the County of Colquitt, State of Georgia, of the first part, and H. T. Crawford, of the County of Colquitt, State of Georgia, of the second part, witnesseth, that the said party of the first
398 part, for and in consideration of the sum of fifteen hundred dollars to him in hand paid, by the party of the second part, at and before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, heirs and assigns, all that tract or parcel of land situate, lying and being in the (8) Eighth District of originally Irwin, now Colquitt County, Georgia, known and distinguished in the plan of said district as lot number (383)

three hundred and eighty-three, containing four hundred and ninety acres, more or less.

To have and to hold the said bargained premises, together with all and singular, the rights, members and appurtenances thereto appertaining or belonging to their own proper use, benefit and behoof of the said party of the second part, his heirs and assigns, forever in fee simple. And the said party of the first part will, and his heirs, executors, administrators, shall, the afore granted premises unto said party of the second part, his heirs, executors, administrators and assigns, forever warrant and defend by virtue of these presents.

In witness whereof the said party of the first part has hereunto set his hand and affixed his seal the day and year above written.

his
[SEAL.] JOHN x McMULLEN.
mark.

Signed, sealed and delivered in presence of:

S. L. HAYES.
P. A. WRIGHT.
Not. Pub. Thos. Co., Ga.

(3-50c Revenue Stamp.)

(Indorsement on back:) John McMullen to H. T. Crawford. Georgia, Colquitt County. Clerk's office, Sup'r Court. Filed Nov. 11, 1898, 9 A. M. Recorded in Book "K," page 413, Nov. 14, 1898. G. W. Newton, Clerk.

EXHIBIT No. 15.

GEORGIA, *Thomas County:*

399 Before me personally came Mrs. Jennie L. Graves, who being duly sworn, says that she and her two daughters are the only heirs at law of Cyrus S. Graves, and that as such she had an interest in certain lands in Colquitt County, but that some time since she conveyed all her interest in said lands to her two daughters, Minnie C. and Ida J. Graves, and since then has had no interest in the lands in said County of Colquitt; nor has she been in any way responsible for any expenses since she conveyed her interests to her daughters in 1889. Deponent went with her daughters to Colquitt County in 1889 and went to the house of William McMullen and had a talk with him. He professed to feel most kindly towards deponent because of what she did for him in 1865, and said he did not charge anything for what he had done in looking after the lands and would willingly do anything he could in the future upon the same terms. Deponent did not like to receive any kindness without making some return, and she offered him $5.00 as a gift, but he declined to take it, but he finally consented to take it and give it to his wife as a present from deponent. Deponent is not in any way liable to Wm. McMullen for his service in looking after the

lands, in so far as he rendered any, because she has had no interest in the lands since 1889.

This deponent makes this affidavit to be used in the case of Minnie C. Graves, *et al., vs.* Wm. McMullen, Petition for Equitable Relief in Colquitt Superior Court.

JENNIE L. GRAVES.

Sworn to and subscribed before me this 10th day of January, 1899.

J. T. CULPEPPER,
Not. Pub., Thomas Co., Ga.

(Indorsed on back:) Miss Minnie C. Graves, *et al., vs.* Wm. McMullen. Affidavit of Mrs. Jennie L. Graves. McIntyre, Hansell & Merrill, Pl'ffs' Att'ys.

EXHIBIT No. 16.

GEORGIA, *Thomas County:*

Before me personally came Misses Ida J. Graves and Minnie C. Graves, who being duly sworn, depose and says, each for herself, that they are the only children of Cyrus S. Graves, deceased, and with their mother, Mrs. Jennie L. Graves, are the only heirs at law
400 of said Cyrus S. Graves. That about the year 1889 they visited Colquitt County with their mother to look after some lands that had come to them through their father. That on said visit they called at the house of William McMullen who had previously agreed to look after the lands above referred to for them. That the said McMullen, in the course of conversation, referred to a kindness done him by Mrs. Graves, the mother of deponents, and said that he could not and would not accept anything from them for whatever service he had been able to render them, and that he would continue to do what he could to look after their interest without charge. They heard something about making him a present for his wife, but did not hear the final result of that proposition. McMullen did say that he would gladly do all he could for them without any pay. That their mother has conveyed all her interest in said lands to deponents and now has no interest therein. That for the reasons above set out they have never offered to pay McMullen for his services, and for the additional reason that they have many letters received by due course of mail from said McMullen, running through all the years from 1889 to 1897, and in no one of them does he ever mention the subject of compensation for his services, or in any way set up a claim for any amount as due him by these deponents or their mother, or any one of them. In a letter dated April 25th, 1896, he wrote that he did not want to be agent any longer, as the lands were being ruined, and used the following words: "I have done all I could and it has been no good." But even then, when seeking to be relieved of the agency, he made no claim for payment for his services, nor has he ever rendered any statement of account, or told

of any money expended for these deponents or expenses incurred in their behalf.

Deponents further swear that McMullen has not attended to the giving in of the property for taxation, as he promised and undertook to do, but has neglected the same, so that deponents have been more than once double taxed. That in 1894 one Truluck, the tax collector of Colquitt County, wrote them that their names were not on the tax books for that year, and later on wrote them that no one was looking after their lands at all, and deponents sent the money to pay the taxes for that year direct to him, Truluck, and received the receipt from him. In the years 1889 and 1890 E. H. Bryan wrote them that he had given in their property for taxes and deponents paid him $2.00, the amount of his charge for doing so, and the amount of their taxes then was only a fraction over $19.00.

401 In 1891 and '92 deponents received a letter from M. S. Cheshire, tax collector, telling of the amount of their taxes, and they were then $91.39, and McMullen was not mentioned, but the taxes were paid direct to said Cheshire. That McMullen's failure to give in the property caused them to be double taxed. Deponent have tax receipts for all the years since 1889, and the name of McMullen appears on but four of them all told, and one of these was for a year in which McMullen had ceased to pretend to represent them.

Deponents say further that they never had any contract with said McMullen to represent them unless his agreement to look after their lands without compensation or pay of any kind can be called a contract, and that the pretended representation of them by McMullen has not been worth anything to them so far as they can see, but has been the means of getting them in trouble rather than keeping them out of it.

This affidavit made to be used in the case of Minnie C. Graves, *et al., vs.* William McMullen, Petition for Equitable Relief in Colquitt Superior Court.

MINNIE C. GRAVES.
IDA J. GRAVES.

Sworn to and subscribed before me the 10 day of January, 1899.
J. T. CULPEPPER,
Not. Pub., Thomas Co., Ga.

(Indorsed on back:) Affidavit of Miss Ida J. Graves and Miss Minnie C. Graves. McIntyre, Hansell & Merrill, Pl'ffs. Att'ys.

EXHIBIT No. 17.

Record in attachment proceedings of Wm. M. McMullen *vs.* Minnie C. Graves, *et al.*, heretofore printed at page 15.

* * * * * * *

GEORGIA, *Colquitt County:*

I, J. A. Wilkes, Judge of the County Court of Colquitt County, and ex officio clerk of the same, do hereby certify that the writing

annexed to this certificate is a true and correct and complete copy of the record in the attachment proceedings of William M. McMullen *vs.* Minnie C. Graves, Ida J. Graves and Jennie L. Graves, as the same remains of file and of record in my office.

402 Witness my official signature and the seal of said Court this 2nd day of May, 1899.

[Seal of Court.]

J. A. WILKES,
Judge, Colquitt County Court.

(10c. Revenue Stamp.)

Exhibit No. 18.

Georgia, *Colquitt County:*

This indenture made this the first day of December, in the year of our Lord one thousand eight hundred and ninety-seven, between D. M. Reaves, of the County of Colquitt, State of Georgia, of the first part, and H. T. Crawford, of the County of Colquitt, State of Georgia, of the second part:

Witnesseth, that the said party of the first part, for and in consideration of the sum of six hundred and fifty [dollars] to him in hand paid by the said party of the second part, on or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, the following land, to-wit: A certain tract or parcel of land situate, lying and being in the (8) Eighth District of Colquitt County, Georgia, known and distinguished in the plan of said eighth district by the number three hundred and fifty-three (353), it being the south half of said lot of land marked by stakes and blazes and containing in all (245) two hundred and forty-five acres, be the same, more or less.

To have and to hold the said described land and premises, together with all and singular the rights, members and appurtenances thereto, appertaining or belonging to the own proper use benefit and behoof of said party of the second part, his heirs and assigns forever in fee simple.

And the said party of the first part will, and his heirs, executors and administrators, shall, the afore granted premises unto the said party of the second part, his heirs, executors, administrators and assigns forever warrant and defend by virtue of the presents.

In witness whereof the said party of the first part hath hereunto set his hand and affixed his seal the day and year above written.

[L. S.]

D. M. REAVES.

403 Signed, sealed and delivered in the presence of:

S. G. GREGORY,
G. W. NEWTON,
Clerk Supr. Ct.

Recorded Dec. 27, 1897. G. W. Newton, Clk. Supr. Ct.

GEORGIA, *Colquitt County:*

OFFICE CLERK SUPERIOR COURT.

I, G. G. Henderson, Clerk of the Superior Court in and for said County, do hereby certify that the above and foregoing two pages of written matter is and does contain a true and exact copy of deed from D. M. Reaves to H. T. Crawford as appears from the Deed Records Book J, page 438, said county.

Given under my hand and official seal this May 10, 1899.

[SEAL OF COURT.] G. G. HENDERSON,
Clerk Superior Court, Colquitt Co., Ga.

EXHIBIT No. 19.

Warranty Deed.

STATE OF GEORGIA, *Colquitt County:*

This indenture, made this the twenty-sixth day of July in the year one thousand eight hundred and ninety-five between D. A. Autry, of the State of Georgia and County of Colquitt, of the first part and Autry & Reaves, a firm composed of D. A. Autry and D. M. Reaves, of the State of Georgia and County of Colquitt, of the second part, witnesseth, that the said party of the first part for and in consideration of the sum of $735.00, Seven hundred and thirty-five dollars, to him in hand paid by the said parties of the second part at or before the enscaling and delivery of these presents, the receipt whereof, is hereby acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said parties of the second part, and to their heirs and assigns forever all of the south half of lot of land situate, lying and being in the Eighth District of Colquitt County, Georgia, known and distinguished in the original survey by the number (353) three hundred and fifty-three and containing in all 245, two hundred and forty-five acres, be the same more or less.

404 To have to hold, the said described land and premises together with all and singular the rights, members, appurtenances thereto in anywise appertaining or belonging to the only proper use, benefit and behoof of the said parties of the second part their heirs and assigns in Fee Simple forever.

And the said party of the first part will, and his heirs, executors and administrators shall the afore granted premises unto said parties of the second part, their heirs, executors, administrators and assigns, forever warrant and defend, by virtue of these presents.

In witness whereof, the said D. A. Autry, party of the first part, hath hereunto set his hand and seal the day and year above written.

[L. S.] D. A. AUTRY.

Signed, sealed and delivered in the presence of:
J. F. COOPER,
T. D. DAUGHTRY, *N. P.*

[Indorsed on back:] Warranty Deed. From D. A. Autry to D. M. Reaves. Georgia, Colquitt County, Clerk's Office Superior Court. Filed July 27, 1895. Recorded in Book G, Page 793, July 27, 1895. G. W. Newton, Clerk.

EXHIBIT No. 20.

STATE OF GEORGIA, *Colquitt County:*

In consideration of the sum of $735.00, Seven hundred and thirty-five dollars to me paid by D. A. Autrey, I, C. H. Autrey, of the County of Colquitt and State of Georgia, do hereby sell and convey unto D. A. Autrey, of the County of Colquitt and state of Georgia, his heirs and assigns, all that tract or parcel of land described as follows: A certain tract or parcel of land situate, lying and being in the Eighth district of Colquitt County, Georgia, it being the south half of lot of land number (353) three hundred and fifty-three and containing in all (245) two hundred and forty-five acres, more or less. To have and to hold, said land and appurtenances unto said Daniel A. Autrey, his heirs, executors, administrators and assigns in fee simple. I warrant the title to said land against the lawful claims of all persons.

405 In witness whereof, I have hereunto set my hand and affixed my seal this the 2nd day of February 1894.

[L. S.] C. H. AUTREY.

Signed, sealed and delivered in the presence of:
T. D. DAUGHTRY,
N. P. C. Co., Ga.

[Indorsement on back:] Georgia, Colquitt County. Office Clerk Supr. Court. Filed Feby. 17th 1894. Recorded in Book G, folio 55, Feby. 19th 1894. G. W. Newton, Clerk.

EXHIBIT No. 21.

STATE OF GEORGIA, *County of Colquitt:*

In consideration of the sum of $735.00, Seven hundred and thirty-five dollars, to me paid by Charley H. Autrey, I, M. M. Blanton, of the County of Colquitt and state of Georgia, do hereby sell and convey unto C. H. Autrey, of the County of Colquitt and State of Georgia, his heirs and assigns, all that tract or parcel of land, described as follows: A certain tract or parcel of land, situate, lying and being in the Eighth Dstrict of Colquitt Co., Ga., it being the south half of lot of land number (353) and containing in all (245) two hundred and forty five acres, more or less.

To have and to hold, said land and appurtenances unto said Charley H. Autrey his heirs, executors, administrators and assigns, in fee simple. I warrant the title to said land against the lawful claims of all persons.

In witness whereof I have hereunto set my hand and affixed my seal this the 30th day of November 1893.

[SEAL.] M. M. BLANTON.

Signed, sealed and delivered in the presence of:

L. M. MATHIS,
J. F. MONK,
N. P. Ex-Officio, J. P.

(Indorsement on back:) Warranty Deed. From M. M. Blanton for ½ lot 353, 8th District, Colquitt, to Charley H. Autrey, Colquitt Co., Ga. Georgia, Colquitt County. Clerk's office, Superior Court. Left for record December 5, 1893. Recorded in Book F, 406 folio 752, December 6, 1893. G. W. Newton, Clerk.

EXHIBIT No. 22.

STATE OF GEORGIA, *Thomas County:*

In consideration of the sum of $590.00, five hundred and ninety dollars, to ————, paid by M. M. Blanton, I P. S. Bower, of the County of Thomas and State of Georgia, do hereby sell and convey unto the said M. M. Blanton, of the County of Colquitt and State of Georgia, his heirs and assigns, all that tract or parcel of land, described as follows: Part lot of land, situate, lying and being in the Eighth District of Colquitt County, known and distinguished in the plan of said district by the number (353) three hundred and fifty-three, it being an undivided half interest in said lot of land containing two hundred and forty-five acres more or less, with all the rights, titles and interest therein.

To have and to hold said land and appurtenances unto said M. M. Blanton, his heirs, executors, administrators and assigns, in fee simple. I warrant the title to said land against the lawful claims of all persons. In witness whereof I have hereunto set my hand and affixed my seal this the 14th day of November, 1892.

[SEAL.] P. S. BOWER.

Signed, sealed and delivered in presence of:

F. J. WINN,
W. H. BIBB,
N. P. & E. O. J. P., Thomas Co., Ga.

(Indorsed on back:) Warranty Deed. From P. S. Bower, for ½ interest in 353, 8th, Colquitt, to M. M. Blanton. Georgia, Colquitt County. Clerk's office, Superior Court. Left for record December 5, 1893. Recorded in Book F, folio 753, December 6, 1893. G. W. Newton, Clerk.

(NOTE BY CLERK.—The figure 2 appears to have been written over the figure 3 in the figures in the deed indicating the date of its execution.)

407 EXHIBIT No. 23.

GEORGIA, *Thomas County:*

This indenture made this 30th day of June, in the year one thousand eight hundred and ninety, between Bettie Bruce Daniel, of the County of La Plata, State of Colorado, of the first part and A. M. Watson, of the County of Berrien State of Georgia, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of four hundred and ninety dollars, to her in hand paid, by the party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey unto the said party of the second part, his heirs and assigns, all her undivided one-half interest in lot of land number three hundred and fifty-three (353), in 8th Dist. of Colquitt County, Georgia.

To have and to hold said named parcel of land, together with all and singular, the rights, members and appurtenances thereto appertaining or belonging, to their own proper use, benefit and behoof of the said party of the second part, his heirs and assigns, forever in fee simple. And the said party of the first part will, and her heirs, executors and administrators shall, the afore granted premises unto the said party of the second part, his heirs, executors, administrators and assigns, forever warrant and defend by virtue of these presents.

In witness whereof the said party of the first part has hereunto set her hand and affixed the seal the day and year above written.

[L. S.] BETTIE BRUCE DANIEL.

Signed, sealed and delivered in presence of:
L. E. DICKSON,
H. GARBANITI,
Judge County Court:

(Indorsed on back.)

STATE OF COLORADO, *County of La Plata:*

I, H. Garbanati, do certify that I am the clerk of the County Court of La Plata County, Colorado; that the same is a Court of record; that H. Garbanati, whose signature is well known to me, and is attached to the foregoing deed, is the Judge of said Court; that his signature is genuine.

408 In witness whereof I have hereunto set my hand and the seal of my office, this 10th day of July, 1890.

[SEAL OF COURT.] H. GARBANATI,
Ex-Officio Clerk of the County Court,
La Plata Co., Colorado.

(Indorsement:) Deed from Bettie B. Daniel to A. M. Watson. Lot 353, acres 245. Georgia, Colquitt County. Office Clerk Supr. Court. Filed for record Nov. 19, 1890, 2 P. M. Recorded in Book D, page 676, November 27, 1890. E. H. Bryan, Clerk.

Exhibit No. 24.

Georgia, *Thomas County:*

This indenture made this the fifth day of November, A. D. eighteen hundred and ninety, between A. T. MacIntyre, Jr., and A. M. Watson, both of the County of Thomas and State of Georgia, parties of the first part, and W. W. Ashburn, of the County of Dodge and State of Georgia, party of the second part:

Witnesseth, that the said parties of the first part for and in consideration of the sum of fifty-four thousand six hundred and sixty-two & 50/100 dollars, to them in hand paid, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened and conveyed, and by these presents do grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, all those tracts or parcels of land situate, lying and being in the (8th) Eighth District of Colquitt County, Georgia, and known and distinguished in the plan of said district as lots of land numbers (359) three hundred and fifty-nine, (406) four hundred and six, (358) three hundred and fifty-eight, (357) three hundred and fifty-seven, (423) four hundred and twenty-three, (424) four hundred and twenty-four, (447) four hundred and forty-seven, (474) four hundred and seventy-four, (475) four hundred and seventy-five, (476) four hundred and seventy-six, (401) four hundred and one, (495) four hundred and ninety-five, (428) four hundred and twenty-eight, (338) three hundred and thirty-eight, (448) four hundred and forty-eight, (427) four hundred and twenty-seven, (400) 409 four hundred, (351) three hundred and fifty-one, (360) three hundred and sixty, (378) three hundred and seventy-eight, (453) four hundred and fifty-three, (522) five hundred and twenty-two, (493) four hundred and ninety-three, (376) three hundred and seventy-six, (307) three hundred and seven, (306) three hundred and six, (311) three hundred and eleven, (520) five hundred and twenty, (331) three hundred and thirty-one; all of the above lots containing (490) four hundred and ninety acres each, more or less. Also, part of lot number (405) four hundred and five, being (122½) one hundred and twenty-two and one-half acres, more or less, in the southwest quarter of said lot, and three hundred acres of lot number (477) four hundred and seventy-seven, being all of said lot on the west side of Sloan Creek, except (10) ten acres in the northwest corner of said lot, and east half of lot number (294) two hundred and ninety-four, and the southern part of the west half of said lot, which portion contains one hundred acres, and a part of number (266) two hundred and sixty-six, being on the west side of said lot, Oakey Woods Creek, being the east line and to contain (122½) one hundred and twenty-two and one-half acres, more or less, and all of lot number (386) three hundred and eighty-six, lying on the west side of Ocopilco Creek, containing four hundred and ten acres, more or less, and all of number (385) three hundred and eighty-five, except one hundred acres in the southwest corner, deeded to Miss Catherine Wilks and Mrs. Nancy John-

son, and seventy acres, more or less, in the northeast corner, the portion herein conveyed, containing (320) three hundred and twenty acres, more or less, and (150) one hundred and fifty acres, more or less, of lot number (352) three hundred and fifty-two, bounded as follows: On south by lands of J. F. Cooper and Geo. Hammond, north by original land line and forty-five acres in northwest corner, belonging to R. Burden; on east and west by original lines; and (200) two hundred acres, more or less, of lot of land number (433) four hundred and thirty-three, described as follows: Commencing where the western line of said lot crosses Rattlesnake Branch, thence down the run of said branch to the run of Ocopilco Creek, thence along said creek southward to original land line on south side, thence along said line west to original corner; thence north to starting point; and (200) two hundred acres of (433) four hundred and thirty-three, described as follows: Beginning at the southeast corner, thence along land line west to the run of the Ocopilco Creek, thence north along run of said creek to an old fence, thence east to the original land line, thence south to southeast corner;
410 and (112½) one hundred and twelve and one-half acres in the northeast corner of lot numbered (483) four hundred and eighty-three, and one hundred acres more or less in lot numbered (34) three hundred and forty-one, bounded as follows: On the north by lands of Elijah Gregory, south by lands of W. T. Cooper, west by Moultrie and Quitman Road, east by lands [of] J. Rowan and C. H. H. Burney; and (122½) one hundred and twenty-two and one-half acres, more or less, in the southeast corner of lot number (312) three hundred and twelve, and (122½) one hundred and twenty-two and one-half acres, more or less, in the northwest corner of lot number (340) three hundred and forty, and the undivided one-half of lot number (353) three hundred and fifty-three, and all of lot (451) except (120) one hundred and twenty acres, now in possession of an old negro woman; containing in the aggregate seventeen thousand four hundred and ninety-two (17492) acres, more or less.

To have and to hold said land together with all and singular, the rights, members and appurtenances thereto appertaining and belonging to their own proper use, benefit and behoof of said party of second part, his heirs and assigns, forever in fee simple. And the said parties of the first part will, and their heirs, executors and administrators shall the afore granted premises unto the party of the second part, his heirs, executors, administrators and assigns, forever, warrant and defend by virtue of these presents.

In witness whereof the said parties of the first part have hereunto set their hands and affixed their seals the day and year above written.

[L. S.] A. T. MACINTYRE, JR.
[L. S.] A. M. WATSON.

Signed, sealed and delivered in presence of:
D. H. DAVIS.

[SEAL.] W. C. SNODGRASS,
Notary Public, Thomas County, Ga.

(Indorsement:) Georgia, Colquitt County. Office clerk Supr. Court. Filed for record Nov. 19, 1890, 2 P. M. Recorded in Book D, pages 718, 719 & and 720, December 10, 1890. E. H. Bryan, Clerk.

411 EXHIBIT No. 25.

MOULTREE GA *March* 27 1894.

Mrs J L Graves
Cortland New York

i receiv yores of the 15 in replye to it i say to yo that i will send yo a copy of the trial the next trial com off in supere cort in my county in october next i wold like yo to Bee here then if yo can i don all i could for yo i roate yo a letter from Quitman I guess yo never got it if yo don't have yore lands run out and make the lines plane i can't tell when a man is trespasser on them tho i onest think it wold pay yo to sell all yo have as i look lik they will mak yo pay out lawyers fees s longe as yo hold it i got the plots and grants from Spencer graves and cared them to Col. Metyre you will save yo land tho it will Bee hack badly yo can get 5000 Dolers for it in cash so think on this and what it costes yo a yere taxes and in cortes aganst yore best frendes

yore fren

W M McMULLIAN.

EXHIBIT No. 26.

MOULTREE GA *Aug* 20 1895.

Mrs. J L graves
Cortland N Y

i say to yo that i make yo and the girls a offer for 383 354 i give yo $300 Dolers per aker as i wont it for too of my sons pay the money when titles is made

yor frend

W M McMULLIAN.

EXHIBIT No. 27.

MOULTREE GA *April th*13 1895.

Miss Jinnie L graves Cortland New York Dear frend i am very much suprise at yo all it seames that yo have got insulted with mee and now that i have done all for yo that lay in my power i have paid money out of my one pocket to help yo proteck yore land i also got the plot and grants for yo that yo never wold of got if it had not Bin for me. of course it was not one cent to me
412 only i wold like to now what i have don to cause yo to get insulted at as i have tride to befrend yo i will say to yo that yo beter get som one that will treat yo righ to look after yor lands while if i have don eney thing ronge i am truly sorey of it

yo can ancer this or doo as yo lik i rite severl times and never herd from yo so i close yore frend as ever.

WM. McMULLIAN.

EXHIBIT No. 28.

MAUZY, GA., *Feby.* 27/97.

Miss Ida Graves,
N. Y.

Being a friend of yours, I propose to drop you a note in regards to your lands in this region.

In the first place, your attorney, A. T. McIntyre, Jr., is in very feeble health and expected to die any time. Your interest cannot be attended to with your present attorneys.

Your lot of land No. 384 was boxed and worked out in turpentine by D. A. Autry, and is now exposed to fires. Yet he is going to work it on another year. Your lot No. 345 was compromised with Phillip Norman, and his time is out. You can rent it for enough to pay all taxes accruing on it annually after this, if you give me the authority to rent it.

If you ever expect to be protected in your rights as to your lands in this region you must certainly get new lawyers to attend to your interest.

One trouble has ever been that you always write to too many parties and don't seem to know friend from foe, and it looks as if you don't care whether you loose or save your lands.

The boxed timber on lot No. 384 can be sold and the other lots also, if you wish.

Your interest here certainly requires your presence here, in order that you can see for yourself, and the sooner you come the better. This is necessary in order that you may save your holdings.

You can now come to Moultrie via Pidcock, and also be entertained at a good hotel.

Let me hear from you.

Your frend,

W. M. McMULLIAN.

413 EXHIBIT No. 29.

MOULTRIE, GA., *July* 31/97.

Mrs. Graves,
Cortland, N. Y.

Madam:

I have been expecting to hear from you for some time, but have not heard anything in several months. Col. A. T. McIntyre, Jr., died several weeks ago. His father is now too old to attend to much business, and I would think that your interesst in this county would require another atty.

A certain party is now cutting logs adjoining your lot No. 384, and I fear that they may go on your land to cut any time, in fact

I have been informed by a friend that I might watch it, as certain parties intended to attack your property. All I can do is to keep you advised as to what is going on.

Yours truly,

WM. M. McMULLIN,
Per McD.

EXHIBIT No. 30.

MOULTRIE, GA., *Sept.* 11/97.

Mrs. Minnie C. Graves,
No. 43 Groton Avenue, N. Y.

Madam:

Your letter of 7th instant is to hand and I note contents carefully. I would advise in the first place that you employ good council, and I take the liberty of recommending Capt. John G. McCall and his brother, W. C. McCall, both good and true lawyers of Quitman, Ga. This is the first step for you to take. Then instruct them to proceed to recover damages out of the parties who wronged you.

If you wish to sell your lands, you can easily do so at a fair price and get the money for them. The lot No. 384 that was boxed and some timber cut would not now sell for much, but you ought to recover damages. D. A. Autry was the party who damaged your lot No. 384. Phillip Norman is yet on your land on the farm.

It would not require much time for you to look after your business here. A week spent here would put your business in shape, or we can put it in order even in your absence if you will advise us to proceed and employ the lawyers.

414 The lawyers will take the matter in hand cheaper than the McIntyres did, and they will certainly attend to the business.

There are plenty of hotels at Moultrie now and plenty of accommodations. I advise that you act at once. I could sell two of your lots any time. Please let me hear from you without delay.

Please excuse my being out of letter paper.

Yours truly,

WM. McMULLIN,
McD.

EXHIBIT No. 31.

This exhibit is a slip of paper with the name J. J. Redd written thereon.

EXHIBIT No. 32.

(Memorandum book containing the following writing):
Who is Wm. E. Johnson? Also Dan'l Johnson?
J. J. NORMAN.

See about cost bill.

MACON COUNTY, GA., *May* 26, 1899.

My name is James J. Redd. I formerly lived in Colquitt Co., Ga., formerly Thomas County; lived there from 1849 to 1862, when I went to the war; knew and worked for Joel S. Graves. Joel Graves never made me a deed to lot of 383 in 8th dist. of Colquitt Co., Ga. The deed shown me by M. P. Callaway purporting to be from Joel S. Graves to James J. Read, dated 2nd day of Nov., 1852, conveying lot 383, was never delivered to me, nor do I believe he signed the deed shown to me. I never made a deed to lot No. 383 to Jos. A Shewmake, nor to anyone else for said lot. I have examined the deed shown me by M. P. Callaway, purporting to be from James J. Read to Joseph A. Shewmake, of Burke County, Ga., dated 6th Aug., 1863, and I never signed said deed; never knew a man by name of Jos. A. Shewmake. Never knew N. C. Monroe, whose name is as witness on said deed; was in Macon, Ga., in Aug., 1863, but executed no deed while there. I was well
415 acquainted in Colquitt and Thomas Counties and never knew or heard of a man by the name of James J. Read, and believe this name on these two deeds was intended to be my own. I never saw either deed until this time.

(Signed) JAMES J. REDD.

Witness:
M. P. CALLAWAY.

Macon Co., Ga., May 26, 1899.

Redd also stated to me that when he went to the army in 1862 that he removed his residence from Colquitt Co. and never returned to live; that after he was wounded in the early part of 1863 he came back to his family in Macon Co., and has lived there ever since; that he was in the hospital in Macon during a portion of 1863, but never considered Colquitt Co. his home.

(Signed) M. P. CALLAWAY.

EXHIBIT No. 33.

MAY 26, '99.

Land Book of Irwin County, referred to in evidence as from Monroe Library of the Public Library at Macon; omitted from transcript by stipulation. The fly leaf of said book containing the name of N. C. Munroe, written in ink. The original book sent up to the Circuit Court of Appeals by stipulation for inspection of handwriting.

EXHIBIT No. 34.

STATE OF GEORGIA,
Bibb County:

Before the undersigned personally comes Jennie L. Graves, who, being duly sworn, deposes and says that some time about February, 1899, she heard that there was a deed from, or purporting to be from Joel S. Graves to one James J. Redd, of Colquitt County, Ga., affecting some one of her lots, and in discussing the matter with A. T. McIntyre, Sr., he stated that he knew James J. Redd, of
416 Colquitt County, and believed that he then had among his papers an old note or due bill from said Redd to himself signed in Redd's own handwriting, and that he would look it up and it could be compared with any deed purporting to be from said Redd, should such a deed be produced against affiant; that the said McIntyre made a search for said paper among his old papers, in the presence of affiant and her daughters, and found the paper hereto attached, purporting to be a note or due bill dated the first day of January, 1860, for five dollars, due said McIntyre, and signed James J. Redd. Affiant knew said James J. Redd slightly years ago, but never heard him called Reade; affiant further says that she knew Joel S. Graves personally; that he was a highly cultivated gentleman, and knew and wrote several languages; that his handwriting was a peculiar vertical, as indicated in his signature to his deed of June 8th, 1855, to Cyrus S. Graves; that she heard him say that he had acquired that style from writing Greek and also Hebrew. Affiant knows that there were numerous deeds from Joel S. Graves to lands in southwest Georgia and Colquitt County, and other writings containing his signature from which it would have been easy for one so disposed to imitate his signature. While affiant has not seen the deed offered at this hearing by defendants, purporting to be from Joel S. Graves to James J. Read, she being confined to her room by sickness, and defendants' counsel having retained possession of same, she has grave doubts to its being the genuine signature of Joel S. Graves, as he always signed his name in that peculiar vertical style mentioned aforesaid, and she is informed that the signature of Joel S. Graves to the Reade deed is not so written, and she submits the same for the judgment of the Court by comparison.

JENNIE L. GRAVES.

Sworn to and subscribed before me this 11th day of May, 1899.

J. H. L. GERDINE,
Not. Pub. & Ex-Off., J. P., Bibb Co., Ga.

One day after date I promise to pay Thomas Metiere or bearer five dollars, for value reed. This 1st day of January, 1860.

JAMES J. REDD.

417 EXHIBIT No. 35.

A. T. MacIntyre. A. T. MacIntyre, Jr.

Law Offices of MacIntyre & MacIntyre, Thomasville, Ga.

THOMASVILLE, *Aug. 12th*, 1897.

Mrs. Jennie L. Graves,

MY DEAR MADAM:

I received your letter and thank you and the girls for your sympathy in our great bereavement. I believe it is conceded that .....* was the best lawyer in this circuit and I .....**

We have your deeds and also now have the omnibus deed, which we received from Mr. Graves, which made us ready to try your case at the last court, but I could stay at court to try your case and our boy going out rapidly at home. I expect to continue in business and to try the case of the girls next Court.

I will need all the deeds at the trial; indeed, cannot try the case without each and all of them. We were much troubled [to] get the omnibus or block deed from Mr. Graves and could not try the case without it. I expect to keep deed until after the trial. We were ready and Mr. McMullin had witnesses all there last court, but I could [not] stay from my invalid son. Now that he is no more, I will try to be prepared fully to try your case as soon as I can get it up. Judge Hansell has had two courts held by other judges, and we did not wish to try case only before him (Judge H.)

Yours truly, A. T. MACINTYRE.

*2, words unreadable.
**2, words unreadable.

EXHIBIT No. 36.

MacIntyre & MacIntyre, Attorneys at Law.

THOMASVILLE, GA., *June* 23, 1890.

Dictated by A. T. M., Jr.

Miss Minnie C. Graves, Cincinnatus, N. Y.:

I received your letter this A. M. There was nothing im-
418 proper in your asking Judge Merrill the condition of your estate, and his advice, but I fear that he cannot give you any advice in the matter, as all these transactions are covered over with the cob-webs of the past, I suppose. I have had several parties to ask about your lands. I wrote your mother the other day to wire me. If you intend to sell at all, I wish you would fix your price. We, being your attorneys, they come to us and ask about this land, and when we tell them we do not know your price, they do not believe us. As far as the writer is concerned, he expects to sell

out his Colquitt land inside of the next weeks. If you have a price, name it, and we will try to get it for you. If you don't care to sell your land at all, please let us know, so that we can tell parties that it is not on the market. I have notified the railroad authorities that the rights of way through your land is practically obtained, and they can act as if they had it.

I hope your mother will recover rapidly.

Now, please fix up these rights of way as soon as you can and answer our letter.

Very respectfully,

MACINTYRE & MACINTYRE.
"D."

P. S.—Since writing the above, I have found out that there is another party claiming lot number 383. I am satisfied that your title is the correct one. I believe that they will get up some kind of a title for every lot you have, and before you know it, turpentine the land, and in the meantime I will keep them off, and use every instrumentality known to the law, as your attorneys, to keep them off. Please write me if I am doing right and what to do.

Very respectfully,

MACINTYRE & MACINTYRE.
"D."

EXHIBIT No. 37.

MacIntyre and MacIntyre, Attorneys at Law.

Dictated by A. T. M., Jr.

THOMASVILLE, GA., *June 18th*, 1890.

Mrs. Jennie Graves, Cincinnatus, N. Y.:

I have been offered twenty-five hundred ($2,500) dollars for lots numbers 354, 383, 384, in Colquitt County. The man that
419 made the offer will not hold his offer long. I think this is about as good a price as you could get. If you will take it, wire me.

Yours truly, A. T. MACINTYRE, JR.

EXHIBIT No. 38.

STATE OF GEORGIA:

By His Excellency, George W. Crawford, Governor and Commander-in-chief of the Army and Navy of this State, and of the Militia thereof.

To all to whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of the General Assembly of this State, passed on the nineteenth day of December, eighteen hundred and forty, authorizing any citizen of this State (upon certain conditions in said act stated), after certain dates therein mentioned,

to take out in his own name, a grant or grants for any lot or lots of land, in the Counties of originally Early, Irwin, Appling, Hall, Habersham and Rabun, which shall not then be granted, I have given and granted, and by these presents in the name and behalf of this State, do give and grant unto Eli Graves, of the County of Thomas, his heirs and assigns, forever, all that tract or lot of land, containing four hundred and ninety acres, situate, lying and being in the Eighth District of Irwin County, in the said State, which said tract or lot of land is known and distinguished in the plan of said district by the number three hundred and fifty-four, having such shape, form and marks, as appear by plat of the same hereunto annexed. To have and to hold the said tract or lot of land, together with all and singular the rights, members and appurtenances thereof, whatsoever, unto the said Eli Graves, his heirs and assigns, to his and their own proper use, benefit and behoof forever in fee simple.

Given under my hand and the great seal of the State, this twenty-ninth day of July, in the year of our Lord eighteen hundred and forty-four, and of the Independence of the United States of America, the sixty-ninth.

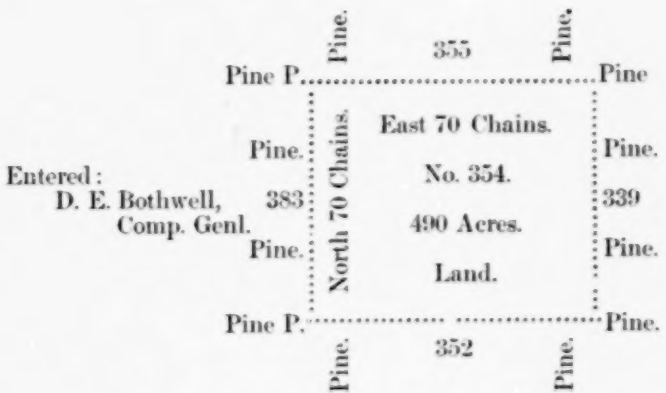
GEO. W. CRAWFORD.

Signed by His Excellency the Governor, this 29th day of July, 1844.

J. N. HORNE, *S. E. D.*

420

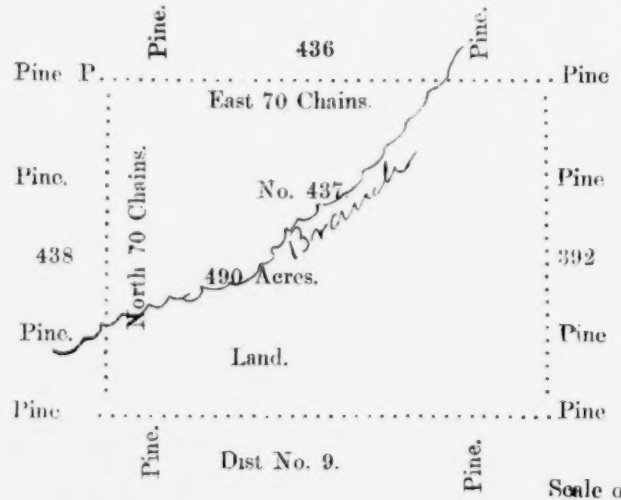
Magnetic Variation, 5 *Deg.* 20 Min. E.



Received
Five Dollars.
W. H. MITCHELL, Tr.

Scale of forty chains per inch.

Magnetic Variation, 5 Deg. 20 Min. East.



Entered:

JOHN G. PARK,

Comp. Genl.

Received Five Dollars:

B. B. Smith,

Tr.

423

Scale of 40 chains per inch.

421 STATE OF GEORGIA:

The above plat is a representation of reverted tract or lot of land granted to Eli Graves, of the County of Thomas, agreeably to the provisions of an act passed 19th December, 1840, situate in the 8th District in the County of Irwin, containing four hundred and ninety acres, which is known and designated in the plan of said district by the number 354.

Surveyed on the 8th day of January, 1820, by Charles Smith, surveyor. Richard Brannan, Stephen Bowen. C. C.

P. M. COMPTON, *Sur. Genl.*

(Geat Seal of State attached.)

(Indorsed on back:) Grant to Eli Graves for lot 354, 8th Irwin. Secretary of State's office, 29th July, 1844. Registered in Book Irwin Reverted Lots, page 742. N. C. Barnett, Sec.

EXHIBIT No. 39.

STATE OF GEORGIA:

By His Excellency Charles J. McDonald, Governor and Commander-in-chief of the Army and Navy of this State, and of the Militia thereof.

To all to whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of the General Assembly of this State, passed on the nineteenth day of December, eighteen hundred and forty, authorizing any citizen of this State (upon certain conditions in said act stated), after certain dates therein mentioned, to take out in his own name a grant or grants for any lot or lots of land, in the counties of originally Early, Irwin, Appling, Hall, Habersham and Rabun, which shall not then be granted, I have given and granted, and by these presents, in the name and behalf of this State, do give and grant unto Eli Graves, of the County of Thomas, his heirs and assigns, forever, all that tract or lot of land, containing four hundred and ninety acres, situate, lying and being in the Eighth District of Irwin County, in the said State, which said tract or lot of land is known and distinguished in the plan of said district by the number four hundred and thirty-seven, having such shape, form and marks as appear by a plat of the same hereunto annexed.

422 To have and to hold the said tract or lot of land, together with all and singular the rights, members and appurtenances thereof, whatsoever, unto the said Eli Graves, his heirs and assigns, to his and their own proper use, benefit and behoof forever in fee simple.

Given under my hand and the great seal of the State, this sixteenth day of June, in the year of our Lord eighteen hundred and forty-three, and of the Independence of the United States of America the sixty-seventh. CHARLES J. McDONALD.

Signed by his Excellency the Governor, this 16th day of June, 1843.

(Great Seal of State attached.)

J. N. HORNE, *S. E. D*

(Here follows fac-simile, marked p. 423.)

424 STATE OF GEORGIA:

The above plat is a representation of Reverted Tract or lot of land granted to Eli Graves, of the County of Thomas, agreeably to the provisions of an act passed 19th December, 1840, situate in the 8th District in the County of Irwin, containing four hundred and ninety acres, which is known and distinguished in the plan of said district by the number 437.

Surveyed on the 3rd day of January, 1820, by Charles Smith, surveyor. R. Brannan, S. Bowen. C. C.

ALFRED M. HORTON,
Sur. Gen'l.

(Indorsed on back:) Grant to Eli Graves for Lot. 437, 8 Irwin. Secretary of State's office, 16 June, 1843. Registered in Book Irwin C., page 637. I. W. A. Sanford, Sec.

EXHIBIT No. 40.

STATE OF GEORGIA:

By his Excellency George W. Crawford, Governor and Commander-in-chief of the Army and Navy of this State, and of the Militia thereof.

To all to whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of the General Assembly of this State, passed on the nineteenth day of December, eighteen hundred and forty, authorizing any citizen of this State (upon certain conditions in said act stated), after certain dates therein mentioned, to take out in his own name a grant or grants, for any lot or lots of land, in the Counties of originally Early, Irwin, Appling, Hall, Habersham and Rabun, which shall not then be granted, I have given and granted, and by these presents, in the name and behalf of this State, do give and grant unto Eli Graves, of the County of Thomas, his heirs and assigns, forever, all that tract or lot of land, containing four hundred and ninety acres, situate, lying and being in the Eighth District of Irwin County, in the said State, which said tract or lot of land is known and distinguished in the plan of said district by the number three hundred and forty-five, having such shape, form and marks, as appear by a plat of the same hereunto annexed.

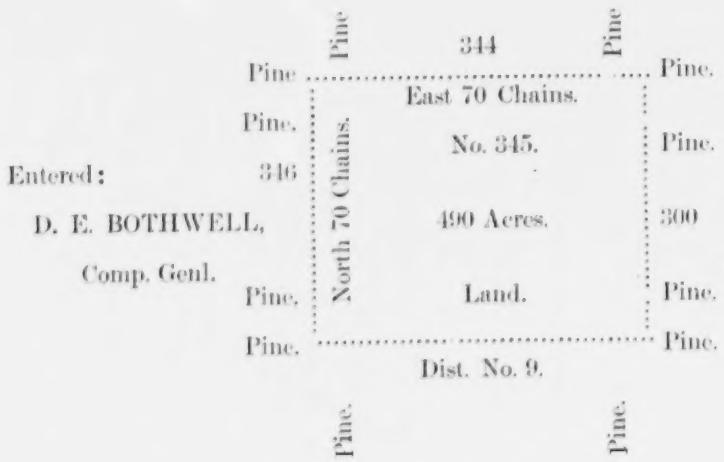
425 To have and to hold the said tract or lot of land, together with all and singular, the rights, members and appurtenances thereof, whatsoever, unto the said Eli Graves, his heirs and assigns, to his and their own proper use, benefit and behoof forever, in fee simple.

Given under my hand and the great seal of the State, this fourteenth day of February, in the year of our Lord eighteen hundred and forty-four, and of the Independence of the United States of America, the sixty-eighth. GEO. W. CRAWFORD.

Signed by his Excellency the Governor, this 14th day of Feby., 1844.

S. J. ANDERSON, *S. E. D.*

Magnetic Variation, 5 Deg. 20 Min. East.



Entered:

D. E. BOTHWELL,

Comp. Genl.

Received

Five Dollars.

M. S. Mitchell, Tr.

Scale of forty chains per inch.

427 STATE OF GEORGIA:

The above is a representation of Reverted Tract or lot of land granted to Eli Graves of the County of Thomas, agreeably, to the provisions of an act passed 19th December, 1840, situate in the 8th district in the County of Irwin, containing four hundred and ninety acres, which is known and distinguished in the plan of said district by the number 345.

Surveyed on the 9th day of January, 1820, by Charles Smith, surveyor. Richard Brannan, Stephen Bowen. C. C.

P. M. COMPTON,
Sur. Genl.

(Indorsed on back:) Grant to Eli Graves, for lot No. 345, 8th Irwin. Secretary of State's office, 14th Feb., 1844. Registered in Book Irwin, Reverted Lots, page 719. N. C. Barnett, Secy.

EXHIBIT No. 41.

STATE OF GEORGIA:

By his Excellency Charles J. McDonald, Governor and Commander-in-chief of the Army and Navy of this State, and of the Militia thereof:

To all to whom these presents shall come, Greeting:

Know ye, that in pursuance of an act of the General Assembly of this state, passed on the nineteenth day of December, eighteen hundred and forty, authorizing any citizen of this state, (upon certain conditions in said act stated,) after certain dates therein mentioned, to take out in his own name, a grant or grants, for any lot or lots of land in the Counties of, originally, Early, Irwin, Appling, Hall, Habersham and Rabun, which shall not then be granted, I have given and granted, and by these presents, in the name and behalf of this State, do give and grant unto Eli Graves, of the County of Thomas, his heirs and assigns forever, all that tract or lot of land, containing four hundred and ninety acres, situate, lying in and being in the Eighth District of Irwin County, in the said State, which said tract or lot of land is known and distinguished in the plan of said district by the number three hundred and eighty three, having such shape, form and marks, as appear by a plat of the same hereunto annexed.

To have and to hold, the said tract or lot of land, together with all and singular the rights, members and appurtenances thereof, whatsoever, unto the said Eli Graves, his heirs and assigns;
428 to his and their own proper use, benefit and behoof forever in fee simple.

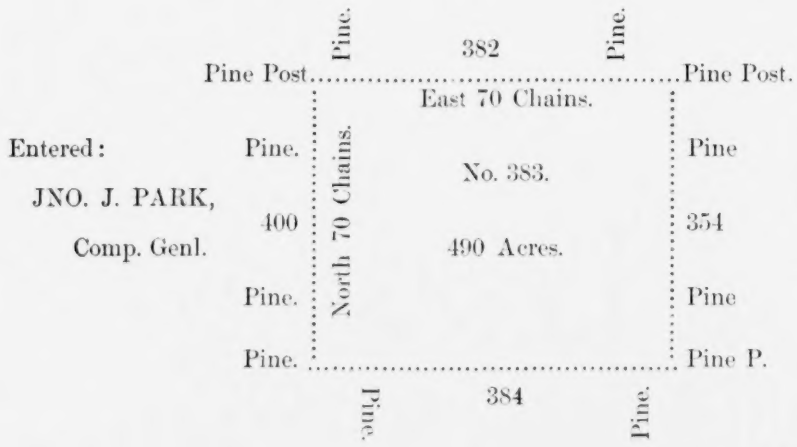
Given under my hand and the great seal of the state, this twenty-third day of September, in the year of our Lord, eighteen hundred and forty-three, and of the Independence of the United States of America the sixty-eighth. C. J. McDONALD.

Signed by his Excellency the Governor, this 23rd day of September, 1843.

R. MICKLEJOHN,
S. E. D.

[Great Seal of State attached.]

Magnetic Variation, 5 Deg. 20 Min. East.



Scale of 40 chains per inch.

Received Five Dollars:
B. B. Smith,
Tr.

430 STATE OF GEORGIA:

The above plat is a representation of Reverted Tract or lot of land granted to Eli Graves of the County of Thomas, agreeably to the provisions of an Act passed 19th December, 1840, situate in the 8th District in the County of Irwin, containing four hundred and ninety acres, which is known and distinguished in the plan of said district by the number 383.

Surveyed on the 7th day of January 1820, by Charles Smith, Surveyor. Richard Brannan, Stephen Bowen. C. C.

ALFRED M. HORTON,
Sur. Genl.

(Indorsed on back:) Grant to Eli Graves for Lot 383, 8. Irwin. Secretary of State's Office, 23rd Sept., 1843. Registered in Book Irwin, C. Appendix, Page 700. Fisher.

EXHIBIT No. 42.

STATE OF GEORGIA:

By His Excellency Charles J. McDonald, Governor and Commander-in-Chief of the Army and Navy of this State, and of the Militia thereof.

To all to whom these presents shall come, Greeting:

Know Ye, That in pursuance of an Act of the General Assembly of this State, passed on the nineteenth day of December, eighteen hundred and forty, authorizing any citizen of this State (upon certain conditions in said act stated), after certain dates therein mentioned, to take out in his own name a grant or grants, for any lot or lots of land, in the counties of originally Early, Irwin, Appling, Hall, Habersham and Rabun, which shall not then be granted, I have given and granted, and by these presents, in the name and behalf of this State, do give and grant unto Eli Graves, of the County of Thomas, his heirs and assigns forever, all that tract or lot of land, containing four hundred and ninety acres, situate, lying and being in the Eighth District of Irwin County in the said State, which said tract or lot of land is known and distinguished in the plan of said district by the number of three hundred and eighty-four, having such shape, form and marks, as appear by a plat of the same hereunto annexed:

431 To have & to hold the said tract or lot of land, together with all and singular, the rights, members and appurtenances thereof, whatsoever, unto the said Eli Graves, his heirs and assigns; to his and their proper use, benefit and behoof forever in fee simple.

Given under my hand and the Great Seal of the State this twenty-third day of September, in the year of our Lord eighteen hundred and forty-three, and of the Independence of the United States of America, the sixty-eighth.

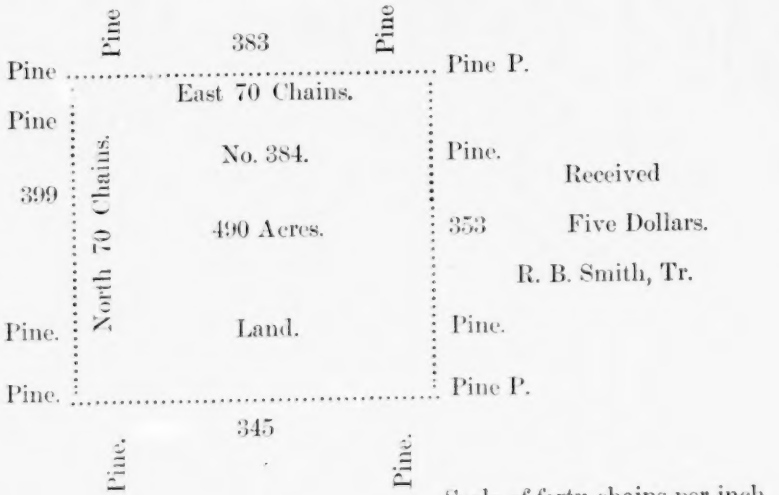
C. J. McDONALD.

Signed by His Excellency, the Governor, this 23rd day of Sept., 1843.

R. MICKLEJOHN, *S. E. D.*

Fisher.

Magnetic Variation, 5 Deg. 20 Min. East.



Entered:

JNO. J. PARK,

Comp. Genl.

Received

Five Dollars.

R. B. Smith, Tr.

Scale of forty chains per inch.

ANNA P. ASHBURN, EXECUTRIX, ETC., ET AL. 335

433 STATE OF GEORGIA:

The above plat is a representation of Reverted Tract or Lot of Land granted to Eli Graves of the County of Thomas, agreeably -o the provisions of an Act passed 19th December, 1840, situate in the 8th District in the County of Irwin, containing four hundred and ninety acres, which is known and distinguished in the plan of said district by the number 384.

Surveyed on the 6th day of Jany., 1820, by Charles Smith, Surveyor; Rich. Brannon, Stephen Bowen, C. C.

ALFRED M. HORTON,
Sur. Gen'l.

(Indorsed on back:) Grant to Eli Graves, for Lot 384, 8, Irwin. Secretary of State's Office, 23rd Sept., 1843. Registered in Book Irwin Co. Appendix, page 699. Fisher.

EXHIBIT No. 43.

STATE OF GEORGIA:

By His Excellency Charles J. McDonald, Governor and Commander-in-Chief of the Army and Navy of this State, and of the Militia thereof.

To all to whom these presents shall come, Greeting:

Know Ye, That in pursuance of an Act of the General Assembly of this State, passed on the nineteenth day of December, eighteen hundred and forty, authorizing any citizen of this State (upon certain conditions in said act stated), after certain dates therein mentioned, to take out in his own name a grant or grants, for any lot or lots of land, in the counties of originally Early, Irwin, Appling, Hall, Habersham and Rabun, in this State, I have given and granted, and by these presents, in the name and behalf of this State, do give and grant unto Eli Graves, of the County of Thomas, his heirs and assigns forever, all that tract or lot of land, containing four hundred and ninety acres, situate, lying and being in the Eighth District of Irwin County, in the said State, which said tract or lot of land is known and distinguished in the plan of said district by the number three hundred and eighty-four, having such shape, form and marks as appear by a plat of the same hereunto annexed: To have and to hold the said tract or lot of land together with all and
434 singular the rights, members and appurtenances thereof, whatsoever, unto the said Eli Graves, his heirs and assigns, to his and their own proper use, benefit and behoof, forever, in fee simple.

Given under my hand and the Great Seal of the said State, this twenty-third day of September, in the year eighteen hundred and forty-three, and of the Independence of the United States of America, the sixty-eighth.

CHARLES J. McDONALD.

Signed by His Excellency, the Governor, this 23rd day of September, 1843.

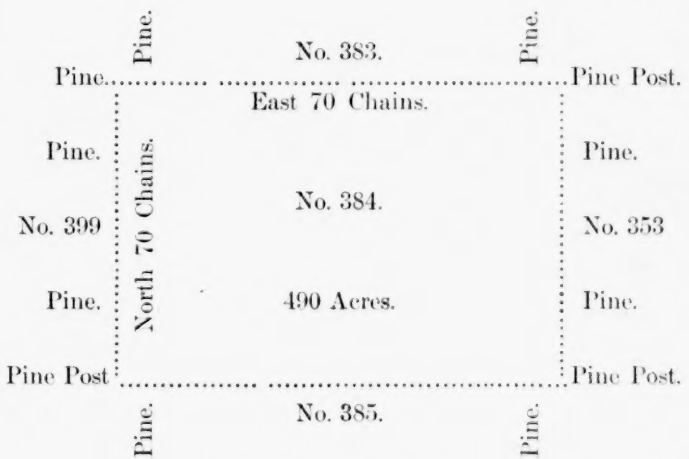
R. MICKLEJOHN, *S. E. D.*

Registered the 23rd day of September 1843.

SECRETARY OF STATE'S OFFICE, GEORGIA,
ATLANTA, *February 20th*, 1894.

The above is a true copy from the Register of Grants in this office, Book "Reverted D," District No. 8, Page 699.
Given under my hand and official seal.
[SEAL OF GEORGIA.] PHILIP COOK,
Secretary of State.

435 Magnetic Variation, 5° 20′ East.



Granted to Eli Graves of Thomas County.
Scale of 40 Chains to an inch.

436 GEORGIA, *Irwin County:*

District No. 8. Surveyed on the 28th day of April, 1820. By Charles Smith, D. S.; Richard Branan, Stephen Bowen, C. C.

SECRETARY OF STATE'S OFFICE,
ATLANTA, GA., *20th Day of February*, 1894.

The above is a true copy from the Record Book Reverted Irwin Page 382.
Given under my hand and official seal.
Received two dollars.
[SEAL OF GEORGIA.] PHILIP COOK,
Secretary of State.

EXHIBIT No. 44.

STATE OF GEORGIA:

By His Excellency Charles J. McDonald, Governor and Commander-in-Chief of the Army and Navy of this State, and of the Militia thereof.

To all to whom these presents shall come, Greeting:

Know Ye, That in pursuance of an Act of the General Assembly of this State, passed on the nineteenth day of December, eighteen hundred and forty, authorizing any citizen of this State (upon certain conditions in said act stated), after certain dates therein mentioned to take out in his own name, a grant or grants for any lot or lots of land in the counties of originally Early, Irwin, Appling, Hall, Habersham and Rabun, in this State, I have given and granted, and by these presents in the name and behalf of this State, do give and grant unto Eli Graves, of the County of Thomas, his heirs and assigns forever, all that tract or lot of land containing four hundred and ninety acres, situate, lying and being in the Eighth District of Irwin County, in the said State, which said tract or lot of land is known and distinguished in the plan of said district by the number three hundred and fifty-three, having such shape, form and marks as appear by a plat of the same hereunto annexed: To have & to hold the said tract or lot of land, together with all and singular the rights, members and appurtenances thereof whatsoever,
437 unto the said Eli Graves, his heirs and assigns; to his hand their own proper use, benefit and behoof forever in fee simple.

Given under my hand and the Great Seal of the said State, this twenty-third day of September, in the year eighteen hundred and forty-three, and of the Independence of the United States of America, the sixty-eighth.

C. J. McDONALD.

Signed by His Excellency, the Governor, this 23rd day of Sept., 1843.

R. MICKLEJOHN, *S. E. D.*

Registered the 23rd day of Sept., 1843.

SECRETARY OF STATE'S OFFICE, GEORGIA,
ATLANTA, *May 6th*, 1899.

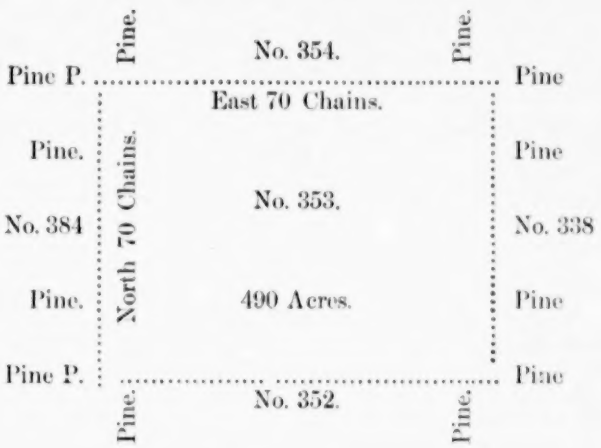
The above is a true copy from the Register of Grants in this office, Book Revt. D. District No. 8, page 689.

Given under my hand and official seal.

[SEAL OF GEORGIA.]

PHILIP COOK,
Secretary of State.

438 Magnetic Variation, 5 Deg. 20 Min. E.



Granted to Eli Graves, of Thomas County.

Scale of forty chains to an inch.

439 GEORGIA, *Irwin County:*

District No. 8.

Surveyed on the 28th day of April, 1820, by Charles Smith, D. S. Richard Branan, Stephen Bowen. C. C.

SECRETARY OF STATE'S OFFICE, ATLANTA, GA.,
6th Day of May, 1899.

The above is a true copy from the Record Book, Reverted Lots, page 379.

Given under my hand and official seal.

Received two dollars.

PHILIP COOK,
Secretary of State.

EXHIBIT No. 45.

GEORGIA, *Thomas County:*

This indenture, made this thirtieth day of March, in the year one thousand eight hundred and eighty-nine, between Jennie L. Graves, of the County of Saratoga, State of New York, of the first part, and Ida J. Graves and Minnie C. Graves, of the County of Saratoga, State of New York, of the second part, witnesseth, that the said party of the first part, for and in consideration of the natural love and affec-

tion which she has and bears to her children, parties of the second part, and the sum of ten dollars, to her in hand paid, by the parties of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey unto the said parties of the second part, their heirs and assigns, the undivided one-third of all those tracts or parcels of land, situate, lying and being in the (8) Eighth District of originally Irwin, now Colquitt County, said State of Georgia, known and distinguished in the plan of said District as lots numbers (345) three hundred and forty-five, (354) three hundred and fifty-four, (383) three hundred and eighty-three, (384) three hundred and eighty-four, and (437) four hundred and thirty-seven, each lot containing four hundred and ninety acres, more or less.

To have and to hold the said undivided one-third of said lots of land, together with all and singular the rights, members and appurtenances thereto appertaining or belonging to their own
440 proper use, benefit and behoof of the said parties of the second part, their heirs and assigns, forever, in fee simple. And the said party of the first part will, and her heirs, executors and administrators shall, the afore granted premises unto the said parties of the second part, their heirs, executors, administrators and assigns, forever warrant and defend by virtue of these presents.

In witness whereof the said party of the first part hath hereunto set her hand and affixed her seal the day and year above written.

[L. S.] JENNIE L. GRAVES.

Signed, sealed and delivered in presence of:
S. L. MOORE.
WILLIAM D. MITCHELL,
Judge County Court, Thomas Co., Ga.

(Indorsed on back:) Deed from Jennie L. Graves to Ida J. Graves and Minnie C. Graves to lot No. 384, 8th Colquitt. Georgia, Colquitt County. Office Clerk Supr. Court. Recorded in Book C. —. D. R., page 410, April 2nd, 1889. E. H. Bryan, Clerk, S. C. Recording fee 50, paid.

Exhibit No. 46.

State of Georgia, *Thomas County:*

This indenture, made this 15th day of April, in the year of our Lord one thousand eight hundred and ninety-nine, between D. A. Autrey, of the County of Colquitt, of the first part, and Ida J. Graves and Minnie C. Graves, of the County of Courtland, State of New York, of the second part, witnesseth, that the said D. A. Autrey, for and in consideration of the sum of five & 00/ dollars cash, in hand paid, the receipt of which is hereby acknowledged, hath bargained and sold, and doth by these presents remise, release, and forever quit claim to the said Ida J. Graves and Minnie C. Graves, their heirs and assigns, all the right, title, interest, claim or demand, the said

D. A. Autrey hath or may have had in and to all that tract of land in the County of Colquitt, State of Georgia, known as lot number three hundred and eighty-four (384), containing four hundred and ninety (490) acres, in the Eighth (8th) District of said County, containing 490 acres, more or less, with all the rights, mem-
441 bers and appurtenances to said lot of land in anywise appertaining or belonging.

To have and to hold the said lot of land to the said Ida J. Graves and Minnie C. Graves, so that neither the said D. A. Autrey, nor his heirs, nor any other person or persons claiming under him, shall, at any time, by any ways or means, have claim, or demand, any right or title to the aforesaid lot of land, or any appurtenances or any right thereof.

In testimony whereof, the said D. A. Autrey hath hereunto set his hand and affixed his seal, the day and year first above written.

[SEAL.] D. A. AUTREY.

Signed, sealed and delivered in presence of:
J. A. MITCHELL.

[SEAL.] HOPE H. ALEXANDER,
Notary Public, Thomas County, Georgia.

(Indorsed on back:) Quit Claim Deed from D. A. Autrey to Ida J. Graves and Minnie C. Graves. Georgia, Colquitt County. Clerk's Office, Superior Court. Left for record 20th day of April, at 5 P. M., 1899, and recorded in Book "L," folio 344, April 21st, 1899. G. G. Henderson, Clerk.

EXHIBIT No. 47.

MOULTRIE, GA., *March 17th*, 1898.

Mrs. Jennie Graves, Courtland, N. Y.

DEAR MADAM:

I find you are the owner of some lands here in this section and I own some 30 thousand acres here in the same section, and I find the lands here are all being cut for turpentine, and it is hard to keep parties from cutting over the lines, and in fact sometimes cut the entire lots. If you wish to dispose of your lands I would purchase them if you will take what I consider the worth of them. Write me at once here and oblige,

Yours very truly,

W. W. ASHBURN.

442 EXHIBIT No. 48.

MOULTRIE, GA., *March 7th*, 1899.

Mrs. J. L. Graves, c/o Mitchell House, Thomasville, Ga.

DEAR MADAM:

If you will take $2450.00 for your lot 354 in 8 Dist. of Colquitt Co., let me know by return mail. If you do not need the money I will allow you 6 per cent. interest for all or part of it for one year.

I remain, yours very truly,

W. W. ASHBURN.

EXHIBIT No. 49.

MAY 2D, 1889.
ADEL BERRIEN CO GA.

Dear cousin Minnie

My step mother handed me a letter from you & said she had written you, but she could not tell you what you wanted to know & I think I can in part wish I could in all I have the Plats to nos 354 384 & 437 it maybe I can find the others I will try see if you are correct about 353 it has been so long since your letter was written from Thomasville that I dont know whether to send them to you there or not think I had better wait till I hear from write me how and where to send & I will send them to you & if in any other I can serve you let me know I will be glad to do so I happened to be in Moultrie on a tax sale day not long since and saved considerable trouble and expense about the land they had made mistakes in the books & caused trouble to many hope you will have no further trouble with yours but I understand there are other claimts to one the lots & I dont know to two of them but I think there will be but little trouble to rout them out

Yours as ever

COUSIN SPENCER GRAVES.

443 EXHIBIT No. 52.

GEORGIA, *Thomas County:*

Court of Ordinary, Nov. 7th, 1879, Regular Term.

It appearing to the Court that it is necessary for the purpose of division and notice of application being given, it is ordered that E. O. Thompson, administrator on the estate of Abram Graves, deceased, have and is authorized to sell the real estate of said deceased upon first giving forty days' notice of sale, as the law directs; and it is further ordered that he account to this Court for the proceeds of said sale, as the law directs.

H. H. TOOK, *Ordinary.*

GEORGIA, *Thomas County:*

I, J. S. Montgomery, ordinary in and for said county, and *ex-officio* clerk of the Court of Ordinary, which is a court of record, do hereby certify that the above half page of written matter is a true and correct transcript from records of said Court.

Witness my hand and official seal this May 6th, 1899.

[SEAL.] J. S. MONTGOMERY,
Ordinary & Ex-Officio Cl'k Court of Ordinary.

EXHIBIT No. 53.

Return of E. O. Thompson, Administrator, on the Estate of Abram Graves, Deceased, from July 4th, 1870, to July 4th, 1871.

To bal. on hand from last return	$1,474.28
To amt. received from rent of homestead, February 1, 1870, to January 1, 1841	90.00
To amount received from sale of homestead, being first payment and ½ of the amount sold for	500.00
To amount received from sale of wild lands in Colquitt Co., being first payment and ½ of purchase month	37.50
By balance on hand, $1933.00	$2,101.78

444 GEORGIA, *Thomas County:*

Court of Ordinary, Oct. 21, 1871.

The foregoing returns of E. O. Thompson, Adm. Estate of A. Graves, having been filed in office, examined and found to be correct: It is ordered that the same be allowed and admitted to record in said Court.

H. H. TOOK, *Ordinary.*

Recorded, Annual Return Book "T," p. 94-95.

E. O. Thompson, Adm'r, in Account with the Estate of Abram Graves, Deceased, to 1872.

July the 5th, 1871.

To bal. cash on hand, last return	$1933.00
To cash received from sale of real estate	537.46
To notes against C. S. Graves, decd., appraised at $924.00, scaled to a gold basis	608.46
	$3078.96

Voucher No. 5.

Received from the hands of E. O. Thompson, notes given by C. S. Graves to the amount of $608.46, payable to estate of A. Graves, decd., May 14, 1866.

J. L. GRAVES.

Examined, approved and admitted to record Oct. 10, 1872, as adjudged by the Court.

H. H. TOOK, *Ordinary.*

Recorded, Annual Return Book "U," pages 56-57.

GEORGIA, *Thomas County:*

OFFICE OF THE ORDINARY OF SAID COUNTY.

I, William M. Jones, ordinary and *ex-officio* clerk of the Court of Ordinary, the Court having no other clerk, do certify that the foregoing page of typewritten matter referring to the estate of Abram Graves, is a true and correct copy taken from the records in my office.

445 Witness my hand and official signature this Mch. 4th, 1903.

[SEAL.] WM. M. JONES,
Ordinary and Ex-Officio Clerk.

(Indorsed on back:) In Circuit Court of U. S., Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al., vs.* H. T. Crawford, *et al.* Exhibit No. 53. Certified copy of Returns and voucher of E. O. Thompson, Admr. on Estate of Abram Graves.

EXHIBIT NO. 54.

STATE OF GEORGIA, *Colquitt County:*

To all and Singular, the Constables of said County, Greeting:

We command you, that of the goods and chattels, land and tenements of James Read, you cause to be made....*.... thirty-one *one* dollars and ....*.... cents, principal debt, and interest from the first day of January, 1859, which was adjudged against him at a Justice's Court, held in and for the 1156 District G. M., on the 12 day of May, 1860, in favor of John W. Fullwood for the use of D. Allen, and, also, the further sum of one dollar and five ct. for the cost thereon, and ..... for this *fi. fa.*, and have you the said sums of money, together with this writ, on or before the second Saturday in June next, to render a full satisfaction for said debt and cost. Herein fail not.

Given under my hand and seal this 25th day of May, 1860.

JAMES M. NORMAN, *J. P.*

(Indorsed on back:) *Fi. fa.* D. Allen *vs.* J. J. Redd. Principal $31.00. Interest ..... Cost Justice $1.05 ....*.... property 35, $1.40. No property to be found by me to levy this *fi. fa.* on. This July the 3d, 1860 .....*..... Bryant, Const.

(*Hole in paper.)

446 EXHIBIT No. 55.

(NOTE.—One end of this exhibit is missing.)

STATE OF GEORGIA, *Colquitt County:*

To all and singular, the Constables of said County, Greeting:

We command you, that of the goods and chattels, lands and tenements of James J. Redd, you cause to be made the sum of fifteen .....llars, and no cents, principal debt, and interest from the ....irst day of January, 1857, which.....djudged against him at a Justice's Court, held in and for the 1151 District G. M., on the eleventh day of February, 1860, in....or of Henery R. Edwards, and also the further sum of one dollar and forty cents for the cost thereon, and thirty-five cts. for this *fi. fa.*, and have you the said sums of money together with this writ, on or before the second Saturday in May next, to render a full satisfaction for said debt and cost. Herein fail not.

Given under my hand and seal this the 18th day of April, 1860.

JAMES M. NORMAN, *J. P.*

(Indorsed on back:) Henry R. Edwards *vs.* James J. Redd. Principal $15.00. Interest ..... Cost $1.40, *fi. fa.* 35 $1.75. No property 35,—$2.10.

No property to be founde by me to levy the within *fi. fa.* on this 3rd July, 1860. Calvin Bryant, Const.

EXHIBIT No. 56.

GEORGIA, *Colquitt County:*

By James M. Norman, one of the Justices of the Peace for said County.

To the Sherif of said county or his deputy or any Law full officer, Greeting:

Whereas komplaint hath ben made before me on the oath of Lewis Harell that on or about the last of July or the fore part of August, in the year 1844, one Alderman Willson of the County of Colquitt, by a false and privy token or ....* and deceitfully
447 did obtane and git in to his hands and possession a....** ....of seventy-five dollars from him the said Lewis Herell of said County

These are there fore to command you forth with to bring the said Alderman Willson before me or some other Justice of the peace for the said county to answer the said komplaint and further to be dealt with according to law.

Given under my hand and seal this 16th day of May, 1856.

[L. S.] JAMES P. NORMAN, *J. P.*

(*One word unreadable.)

(**Several words which cannot be made out, where paper is torn in part.)

(Indorsed on back:) Georgia, Colquitt County. Levied the within warrant on the person of Alderman Wilson this May 21, 1856. James W. Dukes, Constable. Colquitt County, State of Georgia. James M. Norman, Esqr. Moultrie, Colquitt, Co., Georgia.

EXHIBIT No. 57.

Comptroller General's Office, Tax Department.

ATLANTA, *May* 5, 1899.

Mr. H. T. Crawford, Moultrie, Ga.:

DEAR SIR:

I give you below the returns on lot of land No. 353, 8th District of Colquitt County, for the last ten years.

Lot No. 353, 8th District of Colquitt County.

Bruce & Bowers, Thomasville, Ga., 1887, 88, John F. Cooper, Agt. Greenfield, 1891, 92, 95, 97 Williams & Morrison, Savannah, 1896, W. W. Ashburn, Moultrie, 1898.

Very truly,

WM. A. WRIGHT,
Comptroller General.

The above is true and exact copy of the returns for taxes on lot of land No. 353, 8th district of Colquitt County for the past ten years, as shown by the records in the Wild Land Department.

Given under my hand and seal this fifth day of May, 1899.

[SEAL.]

WM. A. WRIGHT,
Comptroller General.

448 EXHIBIT No. 58.

Petition for Injunction, Receiver, &c.

In Berrien Superior Court. October Term, 1893.

MILBURN WAGON CO. ET AL.
vs.
R. G. WILBY & WILEY MATTHIS, W. W. CHISHOLM & CO., ET AL.

Upon hearing the petition and answer in this case it is ordered that J. Z. Elliott be and he is hereby appointed permanent receiver in said case, and that he is hereby authorized to take charge of all the assets of the defendants, R. G. Wilby and Wilby & Mathis, and all assets, real and personal, notes, accounts, evidences of indebtedness, choses in action any and all assets now in the hands of the temporary receiver of this Court and all assets of any kind as prayed for a delivery to a receiver in said petition, and that said receiver proceed at once to collect all the notes, accounts and other evidences of debt against said defendants, R. G. Wilby and Wilby and Matthis, and that he collect by suit all debts owing said defend-

ants which he may consider subject and collectible, and it is further ordered that said receiver sell all the real estate of said defendants or all real estate now in his hands or turned over to him by said temporary receiver after advertising the same for 30 days in the official organ of the Sheriff of Berrien County prior to the day of said sale, and that said sale be made before the Court House of Berrien Co. the first Tuesday of the week next after expiration of said advertisement at public outcry, between the legal hours of sale, and that said receiver hold the proceeds of such sale and all other money from whatever source realized, subject to the order of this Judgment Court, and it is further ordered upon motion of plaintiffs' counsel, and by consent of the counsel for all parties, that this case be referred to A. H. Smith, as Master in Chancery, and that he be authorized to hear and determine all questions of law and facts involved in said case, and that by consent of parties that all parties be allowed to amend their petitions in said..... before said Master, as well as the same could be amended before this Court in term time, in any matter of form as sustained, and that by consent of all parties to this event in said case that said Master be authorized
449 to hear said case at Valdosta, or at such other place as he may desire, and that he hear the same at such time as he may fix, and after ten days' notice to the creditors of the same in said case, and that said Master file his report at the next term of this Court: it is further ordered that the said temporary receiver file a complete report of his actings and doings as such temporary receiver with said Master within 30 days from date, and if Mr. A. H. Smith declines to serve, the Court may appoint another master.

In open Court, Oct. 9th, 1893.

AUG. H. HANSELL,
Judge, S. C., S. C.

GEORGIA, *Berrien County:*

I hereby certify that the above and foregoing is a true copy of the original order appointing J. Z. Elliott permanent receiver in the above stated case, and containing the order authorizing him to sell all the real estate belonging to said before mentioned defendants, as appears on the minutes of Berrien Superior Court.

Given under my hand and the seal of said Court this 10th day of May, 1899.

[SEAL.]

J. P. KNIGHT,
C. S. C., Berrien County, Ga.

EXHIBIT No. 59.

Bill to Marshal Assets, Direction, &c.

Thomas Superior Court, October Term, 1898.

S. L. HAYES, Adm'r, &c.,
vs
Miss MARY J. SMITH, THOMASVILLE NATIONAL BANK, ET AL.

Upon the application of S. L. Hayes, administrator on the estate of A. T. MacIntyre, dec., it is ordered and decreed by the Court that the said S. L. Hayes, administrator, be and he is hereby authorized and empowered to sell each of lots numbers three hundred and eighty-three and three hundred and twenty-three, both lots situate in the (8) eighth district of Colquitt County, Georgia, at private or public sale, as he may deem best for the interest of said estate, and report his actings in the premises to this Court.

Oct. 19, 1898.

AUG. H. HANSEL,
Judge, S. C., S. C.

450 Office Clerk of Superior Court of Thomas County, Georgia.

I, J. W. Groover, Clerk of the Superior Court in and for said County of Thomas, do hereby certify that the above and foregoing is a true copy of an order passed by his Honor, Aug. H. Hansell, Judge of said Court, as appears by the original order of file in said office, and by the minutes of said Court.

Given under my hand and seal of office this the 6th day of May, (1899) eighteen hundred and ninety-nine, A. D.

[SEAL.] J. W. GROOVER,
Clk Sup'r Court Thos. Co., Ga.

EXHIBIT No. 60.

MOULTRIE, GA., *Nov.* 10, 1898. No.....

At Sight Pay to the order of

P. & H. N. S. Co. .....John McMullen.....$1500.00
Fifteen Hundred.....dollars
for lot 383 of land and timber....
Value received and charge the same
To account of
Peacock & Hunt. H. T. CRAWFORD.
Naval Stores Co., Savannah, Ga.

[Stamped on face:] Paid Nov. 11, 1898.

Back of draft, showing indorsements.

his
John x McMullin.
mark

Attest: S. L. Hayes.

Pay to the order of The National Bank of Savannah.

Thomasville National Bank, Thomasville, Ga.

W. H. ROCKWELL, Cashier.

Nov. 10, 1898.

The National Bank of Sav'h.

Paid.

Nov. 11, 1898.

Savannah, Ga.

451 EXHIBIT No. 62.

GEORGIA, *Colquitt County:*

This indenture made this 28th day of August, 1899, between H. T. Crawford, of the County and State aforesaid, of the first part, and W. W. Ashburn, of Fulton County, and Z. H. Clark, of Colquitt County, Georgia, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum hereinafter mentioned, has granted, bargained, demised, sold and leased, and by these presents does grant, bargain, demise, sell and lease to the said party of the second part, his heirs and assigns, all and singular, the following turpentine privilege:

On lot 431, 8th District, Colquitt County, Ga., about 30,000 (thirty thousand) two years' boxes on which this lease conveys the right to work for turpentine until the end of the turpentine season of 1900; also one crop of 10,000 (ten thousand) boxes on lots 379 and 404, 8th District, Colquitt County, Ga., to work for turpentine until end of 1900; also on lot 450, 8th District, Colquitt County, Ga., 5000 (five thousand) boxes, to work for turpentine until end of 1900; also 5000 (five thousand) boxes on lot 402, 8th District, Colquitt County, Ga., to work for turpentine until end of 1900; making in all 50,000 boxes hereby leased for one year, in addition to remainder of this year.

Eighty thousand (80,000) virgin boxes hereby leased for two years in addition to the remainder of this year, or till end of turpentine year 1901, being on the following lots: On a strip of lot 335, 8th, Colquitt, leased from J. J. Herrin; 8000 boxes, more or less, on lot 287, 8th Colquitt; 32,000 boxes, more or less, on lot 379, 8th Colquitt; 3,000 boxes on part leased from M. A. Herne, and 8,000 boxes on part leased from W. W. Ashburn, on lot 385, 8th District, Colquitt, 1,000 boxes on part leased from J. F. Cooper, and on lot 383, 8, Colquitt, 28,000 boxes; being in all 80,000 virgin boxes, which are hereby leased for two years in addition to remainder of this year.

Turpentine privileges to the following land: For cutting 10,000 boxes on lot 287, 8th Colquitt; for cutting 10,000 boxes on north side east part of 404, 8th Colquitt, and 20,000 boxes on the south part of lot 334, 8th Colquitt; making timber to cut 40,000 boxes hereby leased for three years from date of cutting; the said party of the second part paying to the said party of the first part the
452 following sum for the use and privilege of said timber, the receipt whereof is hereby acknowledged: For the 50,000 2nd year boxes $5.00 per M., $250.00; for the 80,000 virgin boxes, $14 per M., $1,120.00; for the 40,000 of round timber $25 per M., $1,000—$2,370.00.

And it is expressly understood and agreed by and between the parties hereto that the said party of the second part is to have free use of the timber for the purpose aforesaid in the lots or parcels of land aforesaid, for the time heretofore mentioned: To have and to use said described timber for turpentine purposes, with all the rights and privileges of cutting and working the trees on said lands, and the construction of all necessary tram-roads over said land for the purpose of conveying the crude stuff to the still of the said party of the second part, or that may be necessary in the operation of his turpentine business.

And the said party of the first part, his heirs, executors, administrators and assigns, the free and uninterrupted use and enjoyment of the said timber, for the time specified, and for the purposes herein mentioned, unto the said party of the second part, his heirs, executors, administrators, assigns, against the said party of the first part, and against any and all persons whomsoever, shall and will warrant and defend by virtue of these presents.

It is further guaranteed and warranted by the party of the first part to the party of the second part, or his assigns, that the total number of boxes and round timber hereinbefore enumerated, is to be found on the tracts or parcels of land mentioned, though there may be overplus on one particular tract and a shortage on another; the consolidated total is guaranteed as above, and any deficiency found in the total amount I hereby bind myself to make good at prices herein mentioned.

In witness whereof, the said party of the first part has hereunto set his hand and affixed his seal the day and year above written.

[SEAL.] H. T. CRAWFORD.

Signed, sealed and delivered in presence of

GEO. R. KLINE.
ROBT. L. SHIPP,
N. P., C. C., Ga.

(U. S. Int. Rev. Stamp $2.50, cancelled.)

453 Recorded March 5th, 1900.

R. G. CLARK,
Deputy Clerk.

GEORGIA, *Colquitt County:*

I, R. G. Clark, Clerk of Spr. Ct. in and for said county, do hereby certify that the foregoing 3½ pages of written matter is a true and correct transcript of record now in my office, in Deed Record N, pages 1 to 3.

Given under my hand and seal of said Court, affixed Mch. 6th, 1903.

[SEAL.] R. G. CLARK,
Clerk Supr. Ct.

GEORGIA, *Colquitt County:*

This indenture made this 28th day of August, 1899, between H. T. Crawford, of the County and State aforesaid, of the first part, and W. W. Ashburn, of Fulton County, and Z. H. Clark, of Colquitt County, Georgia, party of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum hereinafter mentioned, has granted, bargained, demised, sold and leased, and by these presents does grant, bargain, demise, sell and lease to the said party of the second part, his heirs and assigns, all and singular, the following turpentine privileges: On lot 431, 8th Dist., Colquitt County, Ga., about 30,000 (thirty thousand) two years boxes, on which this lease conveys the right to work for turpentine until the end of the turpentine season of 1900; also one crop of 10,000 (ten thousand) boxes on lots 379 & 404, 8th District, Colquitt County, Ga., to work for turpentine till end of 1900; also on lot 450, 8th District Colquitt County, Ga., 5,000 (five thousand) boxes to work for turpentine till end of 1900; also 5,000 (five thousand) boxes on lot 402, 8th District, Colquitt County, Ga., to work for turpentine till end of 1900; making in all 50,000 boxes hereby leased for one year in addition to remainder of this year.

Eighty thousand (80,000) virgin boxes hereby leased for two years in addition to remainder of this year or till end of turpentine year 1901, being on the following lots: On a strip of lot 335, 8th Colquitt, leased from J. J. Herrin, 8000 boxes, more or less; on lot 287, 8th Colquitt, 32,000 boxes, more or less; on lot 379, 8th Colquitt, 3,000 boxes on part leased from M. A. Horne, and 454 8,000 boxes on part leased from W. W. Ashburn; on lot 385, 8th Colquitt, 1000 boxes, on part leased from J. F. Cooper; and on lot 383, 8th Colquitt, 28,000 boxes; being in all 80,000 virgin boxes which are hereby leased for two years in addition to remainder of this year.

Turpentine privileges to the following lands for cutting 10,000 boxes on lot 287, 8th Colquitt, for cutting 10,000 boxes on north side east part of 404, 8th Colquitt, and 20,000 boxes on the south part of lot 334, 8th Colquitt; making timber to cut 40,000 boxes hereby leased for three years from date of cutting. The said party of the second part paying to the said party of the first part the following sum for the use and privilege of said timber, the receipt whereof is hereby acknowledged.

For the 50,000 2nd year boxes, $5 per M., $250; for the 80,000

virgin boxes $14 per M., $1120; for the 40,000 of round timber $25 per M., $1,000,—$2370.00.

And it is expressly understood and agreed by and between the parties hereto that the said party of the second part is to have free use and enjoyment of the timber for the purpose aforesaid in the lots or parcels of land aforesaid for the time heretofore mentioned, to have and to use said described timber for turpentine purposes with all the rights and privileges of cutting and working the trees on said lands, and the construction of all necessary tramroads over said land for the purpose of conveying the crude stuff to the still of the said party of the second part, or that may be necessary in the operation of his turpentine business. And the said party of the first part, his heirs, executors, administrators and assigns, the free and uninterrupted use and enjoyment of the said timber for the time specified, and for the purposes herein mentioned, unto the said party of the second part, his heirs, executors, administrators, assigns, against the said party of the first part, and against any and all persons whomsoever, shall and will warrant and defend by virtue of these presents.

It is further guaranteed and warranted by the party of the first part to the party of the second part, or his assigns, that the total number of boxes and round timber hereinbefore enumerated, is to be found on the tracts or parcels of land mentioned, though there may be overplus on one particular tract and a shortage on another, the consolidated total is guaranteed as above, and any deficiency found in the total amount I hereby bind myself to make good at prices herein mentioned.

455 In witness whereof the said party of the first part has hereunto set his hand and affixed his seal the day and year above written.

[SEAL.] H. T. CRAWFORD.

Signed, sealed and delivered in presence of:
GEO. R. KLINE,
ROBT. L. SHIPP,
N. P., C. C., Ga.

(U. S. Int. Rev. Stamps $2.50, cancelled.)

Recorded, Mch. 5th, 1900.

R. G. CLARK,
Deputy Clerk.

GEORGIA, *Colquitt County:*

Clerk's Office, Superior Court.

I, G. G. Henderson, Clerk Superior Court in and for said State and County, do hereby certify that the foregoing three (3) pages of written matter is a true and exact copy as appears of record in Deed Record Book "N," pages 1, 2, & 3, now on file in this office.

In witness whereof I have hereto set my official signature and affixed the seal of said Court upon this 11th day of May, 1900.

[SEAL.] G. G. HENDERSON, *Clerk.*

(10c. revenue stamp cancelled.)

Exhibit No. 63.

Georgia, *Colquitt County:*

This indenture made this 24th day of February, in the year of our Lord one thousand nine hundred (1900), between H. T. Crawford; of the County of Colquitt, State of Georgia, of the first part, and W. W. Ashburn and Z. H. Clark, of the County of Colquitt, State of Georgia, of the second part, witnesseth, that the said party of the first part, for and in consideration of the sum of nine hundred (900.00) dollars, to him in hand paid by the said parties of the second part, on or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain,
456 sell, and convey unto the parties of the second part, their heirs and assigns, the following land, to-wit: South half of lot of land number three hundred and fifty-three (353) Eighth (8) land District, said County of Colquitt, containing two hundred and forty-five (245) acres, more or less.

To have and to hold the said bargained premises, together with all and singular, the rights, members and appurtenances thereto appertaining or belonging to the own proper use, benefit and behoof of the parties of the second part, their heirs and assigns forever in fee simple. And the said party of the first part will, and his heirs, executors and administrators shall, the afore granted premises unto the said parties of the second part, their heirs, executors, administrators, assigns, forever warrant and defend by virtue of these presents.

In witness whereof the said party of the first part hath hereunto set his hand and affixed his seal the day and year above written.

[L. S.] H. T. CRAWFORD.

Signed, sealed and delivered in presence of:
R. G. CLARK.
G. G. HENDERSON,
Clerk S. C.

(U. S. Int. Rev. stamp $1.00 cancelled.)

Recorded Mch. 9, 1900.

R. G. CLARK,
Dep'ty Clerk.

Georgia, *Colquitt County:*

I, R. G. Clark, Clerk of Superior Court in and for said County, do hereby certify that the above and foregoing 1½ pages of written matter is a true and correct transcript of record now in my office in Deed Book N, page 17.

Given under my hand and seal of said Court, Mch. 6th, 1903.

[SEAL.] R. G. CLARK,
Clerk Supr. Ct.

EXHIBIT No. 64.

STATE OF GEORGIA, *Thomas County:*

This indenture made this 31st day of October, nineteen hundred (1900), between the Union Lumber Company, a corporation
457 of the County of Fulton, of the first part, and Corbett and Crawford, a firm composed of R. J. Corbett and H. T. Crawford, of the County of Colquitt and State of Georgia, of the second part, witnesseth, that party the first part, for and in consideration of the payment to it by the parties of the second part of the sum of sixty-five hundred dollars, as well as the covenant and agreement by said parties of the second part, to give the freight growing out of the conduct of the business herein contemplated to the Tifton, Thomasville & Gulf Railway Company, which Railway Company is owned largely by party of the first part, does hereby grant, bargain, sell, convey and lease to parties of the second part, their heirs and assigns, all the timber suitable for saw mill purposes as large as ten (10) inches in diameter and upwards, situate and growing on the following described lots of land, to-wit: Three hundred thirty-seven (337) on which there are five hundred twenty acres of timber; three hundred thirty-eight (338) on which there are five hundred twenty acres of timber; three hundred fifty-three (353) on which there are two hundred sixty-five acres of timber; lot three hundred fifty-two (352) on which there are one hundred fifty-three acres of timber; all in the Eighth land District of Colquitt County, Ga., and making a total of fourteen hundred fifty-eight (1458) acres hereby conveyed. It is expressly agreed and understood that the parties of the second part shall have the use and enjoyment of said timber for the purposes stated, for the full term of eight years from the date of this conveyance, and that they shall have the right and privilege of peaceable and uninterrupted possession of said tracts of land and free ingress and egress to, on and across the same, to haul logs and other material to, from and over said land, to cut, handle and remove all timber thereon that is hereby conveyed, to construct and operate saw mill and planing mills, tram-roads and other buildings and structures for the convenient working up and using the timber hereby conveyed; and party of the first part will, and the successors shall, the afore granted timber and its uninterrupted use and enjoyment for the time above stated, unto the parties of the second part, their heirs and assigns forever warrant and defend by virtue of these presents, against the lawful claims of all persons whomsoever.

In witness whereof party of the first part has caused its Vice-President to set hereto his official signature and attach its corporate seal the day and year first above written.

UNION LUMBER COMPANY,
By J. W. HIGHTOWER, *V. P.*

458 Signed, sealed and delivered in presence of:
F. J. H. MERRILL.
R. H. WRIGHT,
N. P., Thos. Co., Ga.

(U. S. Int. Rev. stamp $1.00, cancelled.)

Recorded Nov. 2nd, 1900.

G. G. HENDERSON, *Clerk.*

GEORGIA, *Colquitt County:*

I, R. G. Clark, Clerk of Superior Court in and for said County, do hereby certify that the above and foregoing two pages of written matter is a true and correct transcript of record now in my office, Book N, page 418.

Given under my hand and seal of said Court, Mch. 6th, 1903.

R. G. CLARK, *Clerk.*

EXHIBIT No. 65.

GEORGIA, *Colquitt County:*

This indenture made this 26th day of December, in the year 1899, between H. T. Crawford, of the County of Colquitt and the State of Georgia, of the first part, and R. J. Corbett and H. T. Crawford of the County of Colquitt and State of Georgia, the second part, witnesseth, that the said party of the first part, for and in consideration of the sum hereinafter mentioned, has granted, bargained, demised, sold and leased, and by these presents does grant, bargain, demise, sell and lease to the said parties of the second part, their heirs and assigns, all and singular, the timber suitable for saw mill purposes, growing on the following described lots or tracts of land, to-wit: All of lot of land number three hundred and eighty-three (383), in the eighth district of said county and State aforesaid, containing four hundred and ninety acres, more or less; also (210) two hundred and ten acres, more or less, in the north half of lot number (334) three hundred and thirty-four, in eighth district, Colquitt County, Georgia.

The said parties of the second part paying to the said party of the first part the following sum for the use and privilege of said timber, the receipt whereof is hereby acknowledged, to-wit: nine hundred and eighty-five dollars.

And it is expressly understood and agreed by and between the parties hereto, that the said parties of the second part are
459 to have free use and enjoyment of the timber for the purpose aforesaid in the lots or tracts of land for and during the term of five years from the 1st day of January, 1900.

To have and to use said described timber for saw mill purposes, as aforesaid, with all the rights and privileges of cutting and sawing the trees on said land, and the construction of all necessary tram roads over said land for the purpose of conveying the logs stuff to the mills of the said party of the second part, or that may be necessary in the operation of the saw mill business.

And the said party of the first part, his heirs, executors and administraters, the free and uninterrupted use and enjoyment of the said timber for the time aforesaid, and for the purpose aforesaid, unto the said parties of the second part, their heirs, executors and assigns, against the said party of the first part, his heirs, executors, administrators, and any person or persons whatsoever, shall and will warrant and defend by virtue of these presents.

In witness whereof the said party of the first part has hereunto set his hand and affixed his seal the day and year first above written.

[SEAL.] H. T. CRAWFORD.

Signed, sealed and delivered in presence of:
B. C. WEEKS.
G. G. HENDERSON,
Clerk S. C.

Recorded June 11, 1900.

R. G. CLARK,
Dep'ty Clerk.

(U. S. Int. Rev. stamp $1.00, cancelled.)

GEORGIA, *Colquitt County:*

I, R. G. Clark, clerk of Superior Court in and for said County, do hereby certify that the above and foregoing 2½ pages of written matter is a true and correct transcript of record now in my office, in Book N, pages 193 & 194.

Given under my official signature and seal of said Court affixed, this March 6th, 1903.

[SEAL.] R. G. CLARK,
Clerk Supr. Ct.

460 EXHIBIT No. 66.

GEORGIA, *Thomas County:*

Whereas, Dr. R. G. Bruce, late of said county, died intestate; whereas, his wife, Rebecca Bruce, was legally appointed Admx. of his estate; whereas, there are only three heirs of said estate, namely, Rebecca Bruce, Elizabeth S. Bruce and W. W. Bruce, all being of full age; whereas, all the debts of said estate have been paid, and, whereas, by agreement the said heirs have divided the remainder of said estate, both real and personal, between themselves, consisting of the following property: West half of lot of land number three hundred and eighty-seven (387), in the tenth district of Mitchell County, said State, containing one hundred and thirty-five acres, more or less; one undivided half of lot number three hundred and fifty-five (355) in the eighteenth district of Thomas County, said State, lot containing two hundred and fifty acres; one undivided half of lot number three hundred and fifty-three (353), in the eighth district of Colquitt County, Georgia, said lot containing four hundred and ninety acres; also the following city lots in the

City of Thomasville, Georgia, ten lots on Madison Street, east of the lot of L. Dekle, each fronting on said street one hundred and five (105) feet and running back to ditch; two triangular lots fronting each other on Wright Street; one brick store on Broad Street, second door from corner of Broad and Fletcher Street; lot on Broad Street, running from said store to lot of Peter Lindsy and running back to N. Wolff's property; lots on Fletcher Street, running from brick store of W. W. Bruce to property of N. Wolff, running back to N. Wolff's line and to lot described on Broad Street, and lots numbers eighty-eight (88) and eighty-nine (89), in block two (2), column five (5), west, containing each one acre, and personal property, consisting of the following: Three mules, four cows and calves, two 2-horse wagons, one sugar mill and boiler and a small quantity of corn and fodder.

Now this indenture made this 26th day of December, 1884, between Rebecca Bruce and W. W. Bruce, heirs as aforesaid, of the first part, and Elizabeth S. Bruce, of the second part, all of said State and county, witnesseth, that the said parties of the first part, for and in consideration of the deeds made this day to them for their share of the above described property by the party of the second part at and before the sealing and delivery of these presents,
461 the receipt whereof is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey unto the said party of the second part, her heirs and assigns, all of their undivided two-thirds interest, each conveying one-third, in and to the following described property, to-wit: One half of lot of land number three hundred and eighty-seven in the tenth district of Mitchell Co., Ga., containing one hundred and thirty-five acres, more or less; one undivided half of lot of land number three hundred and fifty-three in the eighth district of Colquitt Co., Ga., said half containing two hundred and forty-five acres, more or less; also following city lots in the City of Thomasville, Georgia,—one lot fronting one hundred and five (105) feet on Madison Street, commencing at corner of lot deeded this day to Mrs. Rebecca Bruce, to lot owned by I. Dekle, thence along said Dekle's line five hundred and sixty (560) feet to ditch in rear of said lot, thence along said ditch one hundred and five feet to Mrs. Bruce's corner, thence along Mrs. Bruce's line to starting point on Madison Street, except a street-way of forty feet, being a continuation of Stephens Street; also lot on Broad Street, commencing six feet and two inches from Brick Store of Mrs. Bruce, running down said street S. ninety-three feet, more or less, to lot owned by Peter Lindsy and running back along Lindsy's line to lot owned by N. Wolff one hundred and eight feet, thence along Wolff's line to a point fifty six feet and ten inches from Fletcher Street, thence to starting point; also lot on Fletcher Street beginning at corner of N. Wolff's lot, running said street thirty-three feet and nine inches to Mrs. Bruce's lot, thence running back to N. Wolff's lot seventy-three feet three inches, thence along said line to Wolff's other line running perpendicular to Fletcher Street to starting point; also one undivided third interest in lots number eighty-eight (88) and eighty-nine (89) in

block two (2) column five (5) West, each containing one acre, more or less.

To have and to hold the said described lots of land, together with all and singular the rights, members and appurtenances thereto appertaining or belonging, to the own proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever in fee simple. And the said party of the first part will, and their heirs, executors and administrators shall the aforegranted premises unto the said party of the second part, her heirs, executors, administrators and assigns forever warrant and defend by virtue of these presents.

In witness whereof the said parties of the first part have
462 hereunto set their hands and affixed their seals the day and year above written.

[L. S.] REBECCA BRUCE.
[L. S.] W. W. BRUCE.

Signed, sealed and delivered in presence of:
WILLIAM D. MITCHELL,
JAMES A. LINTON,
N. P. & E. O. J. P.

GEORGIA:

I, J. W. Groover, clerk Supr. Court, in and for said State and county, the same being a Court of record having a seal, and I am clerk thereof, do hereby certify that the above and foregoing deed from Rebecca Bruce and W. W. Bruce to Elizabeth S. Bruce is a true and correct copy from the Record of Deeds in Book "W," pages 596 & 597, now of record in my office.

Given under my hand and official seal of office at Thomasville, Georgia, Thomas County, this the 8th day of May, A. D. 1899.

[SEAL.] J. W. GROOVER,
Clk Sup'r Court, Thomas County, Ga.

EXHIBIT No. 67.

STATE OF GEORGIA, *Thomas County:*

We, Charles S. Rockwell, John Hambleton, Elsey Vann, Rufus Varnedoe and John McKinnon, do swear that we will make a just and true appraisement of all and singular the goods and chattels (ready money excepted) of Abram Graves, deceased, as shall be produced by Edward Thompson, Admr. of the estate of Abram Graves, deceased, and that we will return the same certified under our hands unto the said Edward Thompson, Admr., within the time prescribed by law.

Given under our hands and signatures, this November 25th, 1865.

CHAS. S. ROCKWELL.
RUFUS A. VARNADOE.
his
ELSEY x VANN.
mark
JOHN HAMBLETON.
JOHN McKINNON, SR.

463 STATE OF GEORGIA, *Thomas County:*

A True Inventory and Appraisement of the Goods, Chattels, etc., as Produced to us by the Administrator of Abram Graves, this November 25th, 1865.

One note by John W. Everett for	$ 50.18		0.00
1 note by Wm. M. D. Gray for	21.66		0.00
1 note by Jenkins & Kendall for	65.23		0.00
1 note by Peter Love	$ 41.47	Cr. 20	26.96
1 note by John R. Evans for	$ 50.00		50.00
1 note by John R. Evans for	50.00		50.00
1 note by John R. Evans for	50.00		50.00
1 note by John R. Evans for	49.13		49.13
1 note by Cyrus S. Graves for	9.00		9.00
1 note by Cyrus S. Graves for	82.22		82.22
1 note by Cyrus S. Graves for	339.87	Cr. 100	263.76
1 note by Cyrus S. Graves for	285.25		285.25
1 note by Cyrus S. Graves for	53.50		53.50
1 note by J. Loury Johnson for	61.18		0.00
1 note by W. D. Fontain for	2.00		0.00
1 note by Cyrus S. Graves for	190.46		190.46
1 note by Cyrus S. Graves for	40.00		40.00
1 note by John H. Loury for	307.08		307.08
1 note by John D. Field for	500.00		500.00
1 note by John D. Field for	200.00		200.00
1 note by John D. Field for	350.00		350.00
1 note by John D. Field for	245.00		245.00

Accounts.

J. R. Alexander	96.28
W. E. Davis	3.67
Clairborn Carrol	3.10
J. Jerger	4.22
John McIntosh	27.04
Isaac Jordan	9.10
C. G. Moore	7.92
Griffin & Robinson	35.62
S. B. Spencer	22.93
P. Perham	.60
J. L. Everett	169.88
J. L. Seward	119.68
464 S. S. Adams	122.66
R. H. Hardaway	159.17
Berry Cochran	2.76
S. A. Smith	83.65
Mrs. J. Fisher	255.44
Dr. Little	2.61
J. A. Jordan	4.85
Thomas Dyson	6.00
Charles S. Rockwell	4.85

	N. Connor	78.65
	Mr. Cassels	2.00
	Estate of R. R. Evans	45.00
	T. J. Lightfoot, $3.75	0.00
	B. B. Moore	205.78
	A. F. Everett	98.90
	J. N. McKinnon & Co	1.60
	Mrs. Howell	8.50
	Sanders	.94
	J. M. Alexander	243.48
	J. C. H. Pugh	6.20
	Gross	13.25
	McLendon & Butler	1.31
	A. Powell	2.95
	J. S. Merrill	32.60
	M. Braswell Est	80.00
	M. Braswell Est	22.50
	John Mercer	.75
	O. Dunbar	5.20
	H. McLean	10.50
	R. A. Varnedoe	686.52
	3 Fall leaf tables	22.00
	3 Light stands	9.00
	1 Fall leaf stand	5.00
	2 Wash stands	6.00
	1 Bureau & secretary	45.00
	1 desk with drawers	3.00
	4 bedsteads	23.00
	15 chairs	25.00
	4 beds and 5 pillows	50.00
	5 quilts and 4 counterpanes	27.00
	1 wool coverlet	5.00
	1 white counterpane	5.00
	8 pr. coarse sheets	16.00
	4 pr. fine sheets	16.00
	4 white blankets	40.00
465	1 checked blanket	4.00
	12 teaspoons	18.00
	6 table spoons	18.00
	1 cream spoon	2.00
	1 pr. sugar tongs	3.00
	1 salt spoon	.50
	1 set knives and forks	0.00
	1 safe, 3 looking glasses and 1 clock	8.00
	2 sieves	1.00
	Stoves and pots	7.00
	20 hogs, 16 pigs	189.00
	3 steers	90.00
	5 head stock cattle	60.00
	1 sorrel horse	80.00
	1 cart	20.00

1 buggy and harness	100.00
1 log cart	20.00
Fodder	11.00
40 bu. corn	30.00
15 bu. pinders	15.00
Mill and engine	500.00
Blacksmith tools and grindstone	10.00
156 bu. potatoes	78.00

GEORGIA, *Thomas County:*

We the appraisers certify that the above and foregoing is a true and correct appraisement of the goods, chattels, rights and credits of Abram Graves, deceased, as produced to us by Edward O. Thompson, Admr.

CHAS. S. ROCKWELL,
JOHN McKINNON, SR.,
JOHN HAMBLETON,
Appraisers.

GEORGIA, *Thomas County:*

Before me personally appeared Edward Thompson, Admr., on the estate of Abram Graves, deceased, who being duly sworn says, that the foregoing contains a true and correct account of all the property and effects of said deceased, to the best of his knowledge and belief, except a few articles found since appraisement.

E. O. THOMPSON.

Sworn to and subscribed before me Nov. 25, 1865.

H. H. TOOKE, *Ordinary.*

466 GEORGIA, *Thomas County:*

Court of Ordinary.

NOVEMBER 25, 1865.

The foregoing appraisement of the estate of Abram Graves, deceased, being filed in Court and the same being in form as required by law: Ordered by the Court that said appraisement be admitted to record in said Court as the law directs.

H. H. TOOKE, *Ordinary.*

Recorded January ...., 1866.

H. H. TOOKE, *Ordinary.*

STATE OF GEORGIA, *Thomas County:*

Thomas Court of Ordinary.

I, Wm. M. Jones, Ordinary and *Ex-Officio* Clerk of the Court of Ordinary, the same being a Court of record with seal, do hereby certify that the above (3½) three and one-half pages of typewritten matter is a true and correct copy of the appraisement of the estate of Abram Graves, with certificate of the appraisers, the oath of the administrator and order of the Court admitting the same to record.

Recorded in Book "F," supplement to Book "H," Inventory & Appraisements, pages 361, 362, 363, 364 and 365.

Witness my hand and official signature and seal of office at Thomasville, Georgia, this 23 day of March, 1903.

[SEAL.] WM. M. JONES,
Ordinary and ex-Officio Clerk.

EXHIBIT No. 68.

STATE OF GEORGIA, *Thomas County:*

Court of Ordinary, November 3, Regular Term, 1862.

Jennie L. Graves, having made application by petition to this Court, for letters of administration on the estate of Cyrus S. Graves, deceased, and she desiring to take upon herself said administration, and the usual citation having been given in accordance with the statute and laws of said State in relation thereto, and having given bond required by this Court, and also having taken the oath as administratrix on said estate, in terms of the law of said State, and no objection being filed in Court to her application—

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It is ordered and adjudged by the Court and she be and she is appointed administratrix on the estate of said deceased.

H. H. TOOKE, *Ordinary.*

OFFICE OF THE ORDINARY OF THOMAS COUNTY, GEORGIA.

I, Wm. M. Jones, Ordinary and Ex-Officio Clerk of the Court of Ordinary, the same being a Court of record with a seal, do hereby certify that the above and foregoing is a true and correct copy of the order of the Court of Ordinary, appointing Jennie L. Graves administratrix on the estate of Cyrus S. Graves, now of record in this office, Minutes of the Court, Book "I," Page 194.

Witness my hand and official signature and seal of office at Thomasville, Georgia, this 11 day of March, 1903.

[SEAL.] WM. M. JONES,
Ordinary & ex-Officio Clerk.

EXHIBIT No. 69.

STATE OF GEORGIA, *Chatham County:*

I, James K. P. Carr, Clerk of the Superior Court of Chatham County, Georgia, do hereby certify that I have carefully examined the book of records of said Court, between January 1st, 1883, and January 1st, 1890, inclusive, in which are registered the appointments, the dates of commissions, and dates of expiration of commissions, of all notaries public appointed by said Court between said dates inclusive; and that the following extract from said book of records exhibits a true and complete copy and statement of all entries on said book of records, between said dates inclusive, showing

or relating to the appointment, commission and expiration of commission of all persons having the surname of Thompson, to-wit:

"Date of Commission: April 12th, 1883, April 12th, 1887.

468 Name of Notary Public appointed: W. T. Thompson, W. T. Thompson.

Commission expires: April 12, 1887, April 12, 1891."

I further certify that it does not appear from said examination of the records of said Court that any other appointment of a notary public than those above stated and set forth, were made by the said Court, of any persons having the name of W. T. Thompson, between January 1, 1883, and January 1, 1890.

Witness my official signature and the seal of the said Court at Savannah, Ga., this March 26th, 1903.

[SEAL.] JAMES K. P. CARR,
Clerk Superior Court, Chatham County, Ga.

EXHIBIT No. 70.

STATE OF GEORGIA, *County of Fulton:*

This indenture made this the 23rd day of January, in the year one thousand eight hundred and ninety-nine, by and between W. W. Ashburn, of Fulton County, Georgia, of the first part, and the Union Lumber Company, a firm composed of W. A. Heath and J. W. Hightower, of Dodge County, Georgia, of the second part:

Witnesseth, that for and in consideration of the sum of $15,000.00, cash in hand paid by the parties of the second part to the party of the first part, at and before the sealing and delivery of these presents, the receipt of which is hereby acknowledged and 7 promissory notes all dated this day, and each for the sum of $5,000.00, except the last, which is for $5,111.95, signed by the party of the second part and payable to the party of the first part, and bearing interest at the rate of 6 per cent. from date, and due one each year, on the 15th day of January of each year, beginning with the 15th day of January, 1900, and ending with the 15th day of January, 1906, the said W. W. Ashburn has bargained, sold, granted and conveyed, and by these presents does bargain, sell, grant and convey unto the said Union Lumber Company, their heirs and assigns and legal representatives, all timber from 10 inches in diameter and up upon all the following described lots or tracts or tract of land, to-wit:

469 Lying and being in the eight district of originally Irwin, now Colquitt, County, Georgia, and more particularly described and known on the State survey and plat of said district as lots of land numbers 92, 133, 140, 178, 284, 288, 289, 300, 306, 311, 331, 333, 337, 338, 357, 358, 359, 360, 363, 376, 377, 378, 379, 391, 392, 400, 401, 406, 423; 424; 427, 428, 431, 442, 445, 451, 453, 455, 474, 475, 476, 493, 520, 522, each of the foregoing lots containing 490 acres each; also 220 acres of lot 150, 60 acres of lot 264, 277 acres of lot 263, 300 acres of lot 290, 345 acres of lot

294, 122 acres of lot 340, 100 acres of lot 353, 268 acres of lot 353, 320 acres of lot 385, 419 acres of lot 386, 245 acres of lot 405, 112 acres of lot 482, 245 acres of lot 317, 411 acres of lot 433, 245 acres of lot 295, 106 acres of lot 304, 150 acres of lot 304, 100 acres of lot 303, 164 acres of lot 340, 250 acres of lot 352, 400 acres of lot 349, 120 acres of lot 387, 200 acres of lot 388, 490 acres of lot 395, 100 acres of lot 396, 75 acres of lot 432, 80 acres of lot 433, 350 acres of lot 434, 20 acres of lot 435, 330 acres of lot 436, 415 acres of lot 438, 50 acres of lot 438, 427 acres of lot 439, 90 acres of lot 441, 125 acres of lot 477, 100 acres of lot 481, 275 acres of lot 482, 60 acres of lot 483, 100 acres of lot 443, 490 acres of lot 351, 490 acres of lot 312. Also 100 acres of lot 483, 125 acres of lot 482, which two lots of land named in this paragraph are located in the 9th District of said State, Colquitt County. The timber herein conveyed being in the aggregate 30,838 acres, after having deducted 95 acres on account of farm land.

It is understood and agreed that this conveyance includes all timber suitable for saw mill purposes that will measure ten inches in diameter at the butt or stump, but said party of the second part can use same for any and all purposes they see fit.

It is understood that the number of acres of timber hereby conveyed is exclusive of cleared or farm lands, and that the price paid is upon the basis of $1.62\frac{1}{2}$ cents per acre.

It is further agreed that the said party of the second part shall have the right to cut and remove the said timber at any time and at all times within 15 years from March 1, 1899.

And the said party of the first part does hereby grant and convey unto the party of the second part the right and privilege of peaceable and uninterrupted possession of the aforesaid lots or tracts of land, and of free ingress and egress to, on, and across the same; the right to haul logs and all other material to, from, on or across said lands or any part thereof; to cut, handle, and remove all timber thereon that is hereby conveyed; to construct and operate saw mills, planing mills and other industrial or manufacturing enterprises or structures, equipments, buildings, camps, or other improvements necessary or incidental to the construction or operation of mills, trams or railroads, or like public work, with the right to remove the same whenever the party of the second part may so desire.

The party of the first part does further grant and convey unto the party of the second part the right of way over any and all of the aforesaid land that may be necessary or incidental to the building or operation of tram roads or railroads for and during the period of time covered by this agreement, and to such rights of way as the party of the second part shall determine to build a permanent railroad upon, the said party of the first part hereby binds himself to make a deed in fee simple unto the party of the second part, the width of said permanent right of way to be one hundred (100) feet.

If any troubles arise as to titles to the aforesaid property the said Ashburn, his agents, legal representatives or assigns, are to hold

harmless the said party of the second part, and shall adjust all adverse claims which arise as to the title to the said property.

The said Ashburn owns the land in fee simple to all of the aforesaid lands except about 5,000 acres; he holds the timber leases to the said 5,000 acres, and the said party of the second part takes the timber on the said 5,000 acres subject to the terms of the leases held by Ashburn, which leases Ashburn agrees to transfer to the party of the second part. And the said party of the second part accepts all of the said timber subject to outstanding turpentine leases made by the said Ashburn, it being understood that all turpentine leases expire within three years after cutting of boxes begins on each lot.

And the said party of the first part does hereby further grant and convey unto the party of the second part the right and privilege of taking and using, free of charge, sufficient timber not already described and conveyed herein, which may be on said lands, which the said party of the second part may need in the construction and maintenance of a tram road or railroads, necessary or incidental to the business of the said party of the second part.

It is agreed that as fast as each lot has been cut over the said Ashburn shall have a right to take possession of same and use the same as though this contract never existed, except as to railway, hauling and ingress and egress privileges.

To have and to hold the aforesaid described property and
471 estate, together with all the rights, privileges, franchises, members, appurtenances and easements, either herein specifically set forth, or that in any manner belonging to or appertaining thereto, unto the only proper use, benefit and behoof of the parties of the second part, their heirs, executors, administrators and assigns.

And the said party of the first part, for himself, executors, administrators, and assigns, unto the said party of the second part, their heirs, executors, administrators and assigns, the privileges, rights and titles hereinbefore conveyed shall and will warrant and forever defend by virtue of these presents.

In witness whereof the said party of the first part has hereunto set his hand and affixed his seal, the day and year above written.

[SEAL.] W. W. ASHBURN.

Signed, sealed and delivered in the presence of:

E. A. GREEN.
WHARTON OIDELSON.
Notary Public, Fulton Co., Ga.

GEORGIA, *Colquitt County:*

CLERK'S OFFICE, SUPERIOR COURT.

Filed for record at eight o'clock A. M. April 27, 1899. Recorded Book L, folio 358 to 362.
April 28, 1899.

G. HERNDON, *Clerk.*

Affidavit of H. T. Crawford.

UNITED STATES OF AMERICA, *Western Division, Southern District of Georgia:*

Before the undersigned personally came H. T. Crawford, who on oath deposes and says that on the 10th day of November, 1898, the original deeds to lot three hundred and eighty-three (383) which deponent had agreed to purchase upon approbation of the title by Messrs. Hansell & Merrill, were delivered into his possession in order that he might carry them to said attorneys for examination.

At that time the deed of Joel S. Graves to James Reed, dated
472 Nov. 2nd, 1852, was among said deeds; but on account of apparent age and the wearing of the document where it had been folded in creases said deed was almost entirely dismembered and fragmentary.

When deponent had placed this deed in possession of said firm Mr. Joseph Hansell Merrill one of said firm suggested that in order to preserve said deed it would be necessary to paste these fragments on a sheet of paper, and Mr. Merrill thereupon in the presence of this deponent took a sheet of paper and muscilage and pasted said fragment on the white sheet in the form and condition in which said deed now appears.

Mr. Merrill was careful to use as little muscilage as he thought necessary, and deponent observes that since the pasting was done the muscilage has spread a little more than at the time it was first put on. Deponent remembers that Mr. Merrill called attention to the fact that the place of the original record of the deed in 1858 was on the back of the deed, and would be next to the white paper and he used as much care as he could in pasting that portion of the deed on so as not to conceal the record, in carrying out the object of having the fragment or portion of the deed pasted to the white paper.

Deponent remembers that at the time there was no difficulty at all in reading the entry of record on the back of the deed.

Deponent states that the year of the record on said deed was the year 1858. Deponent further states that he is familiar with the signature of C. H. Autrey the same person whose deed to D. A. Autrey has been offered in evidence in the case of Mrs. Jennie L. Graves against this deponent and others, having seen the said C. H. Autrey write, and also having received letters from him by due course of mail known to be genuine. Deponent states that the signature of said C. H. Autrey on the deed above mentioned dated the 2nd day of February, 1894, is the genuine signature of said C. H. Autrey.

Deponent further states that A. T. McIntyre, Senior, has never given into his possession the plat and grant to lot three hundred and fifty-three (353), nor has he ever exhibited to affiant any papers connected therewith in which the complainants were interested; and that he has never spoken to him about it in any manner whatever; nor has he had any communication with A. T. McIntyre, Senior,

regarding lot three hundred and fifty-three (353), nor did A. T. McIntyre, Junior, ever exhibit or deliver to affiant any of the complainants' papers nor did the said A. T. McIntyre, Junior, ever speak to affiant about any lands claimed by complainants.

473 Deponent further states that the present month is the most important one of the season in the turpentine business; that the spring has just fully developed the sap and the growth in the timber, and that the trees boxed for turpentine bleed more freely in the month of May than in any other month; that deponent now has all his labor hired and all other arrangements made for the continuation of his turpentine business; that he has already been injured and damaged to a considerable extent by the stoppage of his work by the injunction; and if such injunction should be continued deponent would suffer irreparable loss and injury; that his labor will be dispersed and scattered; and the labor already expended in the cutting of his trees and in all his preparations for business will be virtually thrown away; and that the turpentine itself will be a total loss.

H. T. CRAWFORD.

Sworn to and subscribed before me this 11th day of May, 1899.

CECIL MORGAN,
Deputy Clerk.

Affidavit of Nora L. Barbrey.

GEORGIA, *Bibb County:*

Before the undersigned personally comes Mrs. Nora L. Barbrey, who being duly sworn deposes and says, that she is librarian of the Public Library at Macon, Ga.; that as such librarian, she has custody of the books donated to said library by the late Nathan C. Munroe, and that on the 10th day of May, 1899, she delivered to Marion Erwin, from said collection of books in her custody known as the "Munroe Library," book No. 6251, with the signature purporting to be the signature of said Munroe on the inside of the front and back covers; also another book from the same library, known as the Monroe Library aforesaid, entitled, "The copy of the original lists of the drawing of old *old* Irwin County," et[illegible] containing the signature of N. C. Munroe on the inside of the fr[illegible] and back covers.

NORA L. BARBREY.

Sworn to and subscribed to before me this 11th day of May, 1899.

J. H. L. GERDINE,
N. P. & ex-Off. J. P., Bibb Co., Ga.

474 *Affidavit of W. M. Hammond.*

In U. S. Circuit Court for the Eastern Division, Southern District Georgia.

JENNIE GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Petition, etc.

STATE OF GEORGIA, *County of Thomas:*

In person appeared before me, Hope H. Alexander, a notary public in and for said County of Thomas, William M. Hammond, who, first having been duly sworn, deposed and said: "I knew Dr. R. J. Bruce for about sixteen (16) years, and up to the date of his death, some eleven (11) years ago. He left surviving him his widow, Mrs. Rebecca Bruce, a son, Dr. W. W. Bruce, and a daughter, Elizabeth Bruce, who married Capt. Daniel, of the United States Army (now deceased). The above mentioned Mrs. Rebecca Bruce, Dr. W. W. Bruce and Mrs. Elizabeth Bruce Daniel, are the sole surviving heirs at law of Dr. R. J. Bruce, deceased, and all now reside at Thomasville."

W. M. HAMMOND.

Subscribed and sworn to before me this May 8th, 1899.
[SEAL.] HOPE H. ALEXANDER,
Notary Public, Thomas, County, Ga.

Affidavit of C. L. Austin.

STATE OF GEORGIA, *Colquitt County:*

Before me, G. G. Henderson, of said county, an officer of said State, duly authorized by law to administer oaths, personally appeared C. L. Austin, of said County, who on oath says: That he is by profession a civil engineer, and that he is acquainted and familiar with the form of lots of land in the 8th district of Colquitt County, known in plan of said County as lots Nos. 353, 354, 383 and 384, being the lots claimed as the property of the Graves heirs; that, to the best of his knowledge each lot contains 490 acres; that, judging
475 from prices recently obtained for timber for turpentine and lumber purposes, that the timber on each of the above four lots would now be worth, in the virgin state, ($3.00) three dollars per acre for turpentine purposes and ($2.00) two dollars for the timber per acre after said timber had been used for turpentine purposes: that after timber for said purposes should be removed, that said land would now be worth about an average of ($2.00) two dollars per acre; that timber on lot No. 354 appears for the most

part to be in its virgin state; that timber on lot 383 has been recently boxed for turpentine purposes, apparently about December, 1898; that lot 353 has had the timber on the north half boxed for turpentine, and on the lower half the timber has been stripped from the land; that the timber on lot No. 384 has been boxed for turpentine purposes.

[L. S.] C. L. AUSTIN.

Sworn and subscribed before me this 3rd day of May, 1899.

[SEAL.] G. G. HENDERSON,
Clerk S. C., Colquitt County, Ga.

Affidavit of R. C. Ingalls.

STATE OF GEORGIA, *Colquitt County:*

Before me, Z. H. Clark, of said county, an officer of said State, duly authorized by law to administer oaths, personally appeared R. C. Ingalls, of said County, who on oath says that he was present at a public sale in July, 1894, at Moultrie, in said State and county, and that a lot of land was offered for sale by J. Z. Elliott, as receiver of R. G. Willby, and that before said lot was bid on that A. T. McIntyre, Jr., of Thomasville, Ga., announced that said lot was the property of the Graves heirs, and that whoever bought said property under said sale would get no title; that said lot was then offered by said receiver and knocked down to said McIntyre for five dollars; that real value of said lot was about $1200.00, or other large sum.

R. C. INGALLS.

Sworn and subscribed to before me this 3rd day of May, 1899.

[SEAL.] Z. H. CLARK,
Notary Public, Colquitt County.

476 *Affidavit of A. D. Patterson.*

In the Circuit Court of the United States for the Eastern Division of the South District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES, IDA J. GRAVES, and MINNIE C. GRAVES,
versus
H. T. CRAWFORD ET AL.

Personally comes A. D. Patterson, who, first being sworn, deposes and says that about the year 1885 or 1886, he became the agent and representative of P. S. Bower and —— Bruce, of the City of Thomasville, Ga., to look after for them lot of land number three hundred and fifty-three (353), in the eighth (8) land district of said County of Colquitt. That for the year 1886 he, affiant, as agent aforesaid,

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let and rented to Charles Fason all the cultivated land on said lot and the houses thereon standing. That said Fason moved on said land, lived in said houses and cultivated the land on said lot. That the next year he, affiant, leased the land as agent and representative aforesaid to one Wm. E. Johnson, who moved into said houses on said land and cultivated crops on said land for the term, as affiant now remembers, three years; that immediately as said Johnson moved off the said land E. McCranie moved to said land, occupied the houses and made a crop on said land, as the tenant or subtenant of said Bower & Bruce. About this time the title passed out of Bower & Bruce aforesaid and affiant has paid no particular attention to said land.

Affiant was for a number of years Clerk of the Superior Court and County Court Judge of said County of Colquitt, is and has been for last 15 or 20 years familiar with the lands and properties of Colquitt County and the public affairs of said county; that during that time this lot of land has been known and recognized as the land of Bower & Bruce and those to whom said Bower and Bruce sold. Never until to-day did affiant ever hear of any adverse claim to said land, adverse to the title of said Bower & Bruce. That the possession on said land was open, notorious, peaceable and continuous.

A. D. PATTERSON.

Sworn to and subscribed before me this May 5th, 1899.
[SEAL.]
Z. H. CLARK,
Notary Public, Colquitt County, Ga.

477 *Affidavit of Daniel S. Johnson.*

In the U. S. Circuit Court for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES, IDA J. GRAVES, and MINNIE C. GRAVES,
versus
H. T. CRAWFORD, ET AL.

GEORGIA, *Colquitt County:*

Personally comes Daniel S. Johnson, who first being sworn, deposes and says that he is the son of Wm. E. Johnson, of said County of Colquitt. That during the latter part of 1887, affiant, who was at that time a minor, moved with his said father to lot of land number three hundred and fifty-three (353), in the eighth (8) land district of said County of Colquitt, Ga. That at the time they moved to said land, there was a dwelling and smoke house on said lot, which were in bad repair from old age. That affiant and his father repaired the buildings and fences, and built crib, barn, and made other improvements on said land. Affiant's father was then the tenant of P. S. Bower and —— Bruce of Thomasville. That during the year

1888 or 1889 affiant approached said Bower with a view of purchasing said land and offered him $800.00 dollars for said land, but said Bower refused said offer, saying that he did not care to sell, and that a part of said land, or an undivided half interest in same, belonged to —— Bruce. Affiant says and deposes that since that time said land has been in the possession of parties under the Bower & Bruce title as above stated. For past 15 years affiant has lived on or near said land, and during all of that time he has never heard of any one claiming said land adverse to the Bower & Bruce title. Not until this day did he ever hear of complainants laying any claim to said land.

his
DANIEL S. x JOHNSON.
mark.

Sworn to and subscribed before me this May 5th, 1899.
[SEAL.] Z. H. CLARK,
N. P. C. C., Notary Public, Colquitt County, Ga.

478 *Affidavit of W. C. Vereen.*

In Circuit Court of the United States, Eastern Division of the Southern District of Georgia.

Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
versus
H. T. CRAWFORD ET AL.

GEORGIA, *Colquitt County:*

Personally comes W. C. Vereen, who, first being sworn in the above stated matter, says that he is the Vice-President of the Moultrie Banking Company, and is also the owner or interested in four (4) different turpentine farms in said County of Colquitt. That by reason of having engaged in said turpentine business for a number of years, having during that time leased and worked quite a deal of timber for turpentine purposes, affiant is acquainted with the prices and values of timber for turpentine purposes. Especially is affiant acquainted with the worth and value of turpentine timber in Colquitt County, Ga. Affiant does not believe that there is a lot of land in the County of Colquitt on which the turpentine privileges would under any circumstances sell for more than two ($2) dollars per acre. Affiant never gave for said privileges more than $1.65 per acre, except three lots at $1.75, though he has bought and leased a great deal of timber in said county. Affiant further says that after the timber on a lot of land has been boxed for turpentine purposes, it is necessary that the work on same continue, in order to save the crude gum, as well as to protect the timber from fire. That if the timber is not worked and protected from forest fires, which

are prevalent in this (Colquitt) County, the timber is liable to be a total, or virtually so, loss. This affidavit is made to be used in the above stated matter, before His Honor Emory Speer, at chambers.

W. C. VEREEN.

Sworn to and subscribed before me this May 8, 1899.

[SEAL.] Z. H. CLARK,
Notary Public, Colquitt County, Ga.

479 *Affidavit of J. W. Pyles.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

Bill in Equity.

IDA J. GRAVES ET AL.
versus
H. T. CRAWFORD ET AL.

GEORGIA, *Colquitt County:*

Personally appeared before me, the undersigned officer, came J. W. Pyles, who, being duly sworn, deposes and says: That he has been well acquainted with lot of land No. 353, in 8th land district of Colquitt County, for more than twenty years. That a number of years ago this land was taken possession of, and that there has been a continuous, uninterrupted, quiet, peaceable, public and exclusive possession of same for a number of years, greater than seven. There is a dwelling house and field on this land, and that every year this field has been cultivated as a farm, and tenant living in the house. This cultivation and occupation was by tenants of one Bower, and this land is spoken of and known as the "Bower lands," or lot, and has never been known as Graves land, and though affiant has been living in the County for over thirty years, he has never known these lands as the "Graves land," nor has there ever been any tenant occupying same under the Graves, so far as affiant knows.

J. W. PYLES.

Sworn to and subscribed before me this May 6th, 1899.

[SEAL.] Z. H. CLARK,
Notary Public, Colquitt Co., Ga.

Affidavit of Wm. E. Johnson.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Ga.

In Equity. Bill, etc.

JENNIE L. GRAVES, IDA J. GRAVES, and MINNIE C. GRAVES,
versus
H. T. CRAWFORD ET AL.

GEORGIA, *Colquitt County:*

480 Personally appeared Wm. E. Johnson, who first being sworn in the above stated matter, says that in the latter part of the year 1887, he rented of A. D. Patterson, the agent and representative of P. S. Bower and —— Bruce, both of the County of Thomas, said State, all the cultivated land on lot of land number three hundred and fifty-three (353), in the eighth (8) land district of said County of Colquitt. Said land was at that time known and considered as the land of said Bower and Bruce. Nor, so far as affiant ever heard, did any one else have any claim or pay any taxes on said land. Affiant immediately after said contract of rental went into peaceable possession of said land, cultivated all the open land on said lot, lived in the houses that were on said land. That at the time affiant went into possession of said land, there was a two-room log dwelling and smoke-house on said land. Affiant occupied said dwelling, and during the year 1888, affiant, as the tenant of said Bower and Bruce, built cribs, barns, repaired the fences on said land, and returned said land for taxes. That affiant so lived on said land until January, 1891, when he moved off and sub-rented said land to E. McCranie, who lived in the house vacated by affiant and who lived on and worked said land for about two years. That said McCranie left said place during the year, as affiant now remembers, 1892, getting one Beaman to gather and harvest for him, McCranie, the crops then growing on said land. Said Beaman moving into the house and occupying the same. Affiant further avers and says that at the time he first went into possession of said land as above said, it had the appearance of having been an old settled place. That affiant has for last 15 years lived either on or near the said land; never during that time did he ever hear of any title or claim adverse to the Bower and Bruce claim. Never has affiant until this morning heard it intimated that the complainants, as above stated, had any claim on said lot.

W. E. JOHNSON.

Sworn to and subscribed before me this the 5th day of May, 1899.

[SEAL.] Z. H. CLARK,
N. P. C. C., Notary Public, Colquitt County, Ga.

481 *Affidavit of George W. Hammond.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

Bill in Equity.

IDA J. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

GEORGIA, *Colquitt County:*

Personally appeared before me, the undersigned officer, George W. Hammond, who, after being duly sworn, deposes and says: That he has for about twenty years been living in Colquitt County, and about ten years on the lot of land adjoining lot No. 353, in 8th land district of said county, and is and has been well acquainted with said lot of land No. 353, and that there has been a continuous, peaceable, quiet, uninterrupted possession of the same for a number of years greater than seven; that different parties have lived on this land and cultivated the same for farming purposes. That since deponent's residence of twenty years he has never heard of this land being claimed by any Graves or descendant of Graves; but deponent has always known it, and it has always been spoken of as the lands of Bower, who lived, as deponent heard, in City of Thomasville. All the tenants and those who were in possession of this land spoke of it as being tenants of Bower or those claiming under Bower. He has never heard of any one being in possession of the same for any Graves.

G. W. HAMMOND.

Sworn to and subscribed before me this May 6th, 1899.
[SEAL.] Z. H. CLARK,
Notary Public, Colquitt Co., Ga.

Affidavit of John M. Norman.

Circuit Court of the United States, Eastern Division, Southern District of Georgia.

Equity. Bill, &c.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

GEORGIA, *Colquitt County:*

482 Personally comes John M. Norman, who on oath says that he is thirty years old, and during all his life has lived in said County of Colquitt. Affiant is a dealer in real estate, and is

familiar with the prices and values of lands and timber privileges in said County. Affiant says that one and 75/100 ($1.75) dollars would be a good price for the timber (turpentine) privileges for any lot of land in said County of Colquitt. Affiant further says that after timber has been cut or boxed for turpentine purposes, it is necessary that the same then be worked and looked after in order to protect same from forest fires. That if the crude gum is not removed from the boxes that fire will get into the same, burn the tree and will probably cause the timber to fall down. This affidavit is made to be used in the above stated case.

JOHN M. NORMAN.

Sworn to and subscribed before me this May 8th, 1899.

[SEAL.] Z. H. CLARK,
Notary Public, Colquitt County, Ga.

Affidavit of J. J. Norman.

In the Circuit Court of the United States for the Eastern Division, Southern District of Georgia.

Bill in Equity.

IDA J. GRAVES, MINNIE C. GRAVES, and JENNIE GRAVES,
vs.
H. T. CRAWFORD ET AL.

GEORGIA, *Colquitt County:*

Personally appeared before me, Z. H. Clark, Notary Public in and for said County, the undersigned, who, after being duly sworn, to-wit, J. J. Norman, says that there are [he is] well acquainted with the handwriting and signature of James Norman, whose name is attached as a witness as justice of the peace to a deed dated Nov. 2, 1852, from Joel S. Graves to James Read, conveying lot of land No. 383, in 8th district of originally Irwin, now Colquitt, County, and that the same is the genuine signature of said James Norman. That said James Norman was the father of affiant.

J. J. NORMAN.

Sworn to and subscribed before me this May 8th, 1899.

[SEAL.] Z. H. CLARK,
Notary Public, Colquitt County, Ga.

483 *Affidavit of H. T. Crawford.*

In the Circuit Court of the United States, Eastern Division, Southern District of Georgia.

Bill in Equity.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Personally appeared before me H. T. Crawford, who on oath says that he has a good and sufficient warrantee deed in fee simple from D. M. Reaves to this affiant, conveying the south half of lot of land No. 353, in 8th District of Colquitt County, Georgia, and that said deed is duly recorded in record of deeds of Colquitt County, and that affiant in getting up his title papers and other papers in connection with the above cause, he neglected unintentionally to put said deed among his papers, and that he did not discover said deed was not among his papers until he examined his papers with his attorney in City of Macon, Ga., on yesterday, and that he has no opportunity to get said deed by this date of this hearing, but that he has a complete chain of title from one Bower to M. M. Blanton.

H. T. CRAWFORD.

Sworn to and subscribed before me this May 10th, 1899.

CECIL MORGAN,
Deputy Clerk U. S. Cir. Ct., So. Dist. Ga.

Affidavit of W. F. Holt.

GEORGIA, *Bibb County:*

Before the undersigned personally comes W. F. Holt, who, being duly sworn, deposes and says that he was for many years acquainted with Nathan C. Munroe, of Bibb County, Ga.; that Nathan C. Munroe was uncle, by marriage, of affiant's wife; that said Nathan C. Munroe was a man of culture and refinement, and is the same N. C. Munroe who gave his library to the Macon Public Library; that there was no other N. C. Munroe living in Bibb County, Ga., in 1863, of whom he had any knowledge; that he has seen the books from said library numbered 6251—"The History of Modern Greece,"
484 and a copy of the original list of the drawing of old Irwin County; that the signatures N. C. Munroe on the inside of the front and back covers is in the handwriting of said N. C. Munroe, with which signature he is well acquainted; that said N. C. Munroe never wrote his name M-O-N-R-O-E; that he has seen the paper purporting to be a deed dated August 6, 1863, from James J. Read to Jos. A. Shewmake, to lot No. 383 in the 8th district of

Colquitt County, Ga., and purporting to be witnessed by N. C. Monroe, Not. Pub., the said deed being exhibited to affiant by M. P. Callaway, and that from affiant's knowledge of the handwriting of said N. C. Munroe, he states that the same is not in the handwriting of said N. C. Munroe, but is the handwriting of some illiterate person unknown to affiant.

WM. F. HOLT.

Sworn to and subscribed to before me this 10 day of May, 1899.
F. O. SCHOFIELD,
Notary Public, Bibb Co., Ga.

Affidavit of Samuel L. Hayes.

GEORGIA, *Thomas County:*

Before the undersigned personally comes Samuel L. Hayes, who, being duly sworn, deposes and says that he, as administrator of A. T. MacIntyre, Jr., under an order of the Superior Court, did, on or about November 9th, 1898, convey to John McMullin, for the consideration of five hundred ($500.00) the interest of the estate of A. T. MacIntyre, Jr., in lot of land number 383, in the 8th district of Colquitt County, Ga., under the following circumstances: Affiant was informed that the said A. T. MacIntyre, Jr., had only a half interest in the lot, and that William McMullin had the other half interest, and that the five hundred dollars ($500) received by affiant was for the half interest of the said A. T. MacIntyre, Jr., in said lot, and that, to the best of my recollection, the said John McMullin claimed the other half interest as the property of either himself or of his father, Wm. McMullin, and was to have the entire title in himself.

S. L. HAYES.

Sworn to and subscribed to before me, this 3rd day of May, 1899.
[SEAL.] W. H. ROCKWELL,
Notary Public, Thomas Co., Ga.

485 *Affidavit of C. P. Roberts.*

GEORGIA, *Bibb County:*

Before the undersigned personally comes Charles P. Roberts, a clerk in the office of the Ordinary of Bibb County, Georgia, and custodian of the records of the old Inferior Court of said County of Bibb, who, being duly sworn, deposes and says that he has carefully examined the records of said Inferior Court containing the entries of appointment of all notaries public appointed by said Court during the period from April 1, 1859, to September 1, 1863, and that there is no entry therein of any appointment of N. C. Munroe or N. C. Monroe as notary public during said period. There is an entry on

the minutes appointing said N. C. Munroe notary public, April 4th, 1864.

C. P. ROBERTS.

Sworn to and subscribed before me this May 11, 1899.
[SEAL.]
B. J. HOLT,
Dept. Clerk, Bibb Superior Court.

Affidavit of E. O. Thompson.

GEORGIA, *Thomas County:*

Personally comes E. O. Thompson, who, first being sworn, deposes and says that in February, 1860, he (affiant) married the only daughter of Abram Graves. Affiant's wife and Cyrus Graves were the only children of said Abram Graves. That about the year 1857, said Abram Graves had come to Georgia from the State of New York; that previous to coming to Georgia, said Abram Graves had loaned to Joel S. Graves considerable amounts of money, and after loaning said money to said Joel S. Graves, said Abram Graves made a deed or bill of sale of all his property to his son, Cyrus Graves, in consideration of which said Cyrus Graves gave his promissory note for seven thousand (7,000.00) dollars and agreed to live with said Abram Graves, support him during his life and give a settlement to Cornelia Adel Graves, the wife of affiant, on her marriage. That after said Abram Graves came to Georgia said Cyrus Graves refused and failed to carry out his said contract, but moved off and
486 left said Abram Graves. That then said Abram Graves called on said Cyrus Graves for a return of one-half of the property which he, said Abram Graves, had given him, as above stated. Then said Cyrus Graves returned to said Abram Graves one-half of said property that was left, among which was one lot of land in the County of Colquitt, Georgia. That subsequently affiant was appointed the administrator on the estate of said Abram Graves, who died in October, 1865. Affiant complied with all the legal requirements in winding up said estate of Abram Graves, and sold, among other property, the said lot of land in Colquitt County to P. S. Bower and —— Bruce, in the year 1866, as affiant now remembers, for the sum of seventy-five (75.00) dollars. Affiant cannot at this late day recall what the number of said lot was, but affiant remembers that it was one of the six (6) lots of land in 8th District of Colquitt County, Georgia, that Joel S. Graves had sold and conveyed to Cyrus Graves aforesaid. That said lot so sold was not returned after that said sale by affiant for taxes, though he, as the agent and representative for complainant, Jennie L. Graves, did return for taxes, up to about 1889, the other five (5) lots of land in Colquitt County, Georgia. That Joel S. Graves made to Cyrus Graves the deed above mentioned, in consideration of the money which said Abram Graves had loaned him, the said Joel S. Graves. That though while affiant was representing said Jennie L. Graves in returning for taxes said lands, he did not give in the lot above mentioned as sold, which fact was well

known to said Jennie L. Graves, yet she never objected nor raised any claim to said lot. Affiant does not now know where is the deed from Cyrus Graves to said Abram Graves, nor where is the deed affiant, as administrator of said Abram Graves, made to said Bower and Bruce conveying said lot of land.

This affidavit is made to be used in the matter of Jennie L. Graves *et al., vs.* H. T. Crawford *et al.*, equity, bill &c., in the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

EDWARD O. THOMPSON.

Sworn to and subscribed before *ac* this the 6th day of May, 1899.

W. C. SNODGRASS,
Noty. Pub., Thos. Co., Ga.

487 *Affidavit of G. W. Newton.*

STATE OF GEORGIA, *Colquitt County:*

Before me, J. A. Wilkes, an officer of said State, duly authorized by law to administer oaths, personally comes G. W. Newton, of said county, who on oath says that in July, 1894, he was Clerk of the Superior Court of Colquitt County, and that during that month J. Z. Elliott, as receiver of R. G. Wilby, offered at public sale one of the lots of land in above county known as the Graves property; that A. T. MacIntyre, Jr., of Thomasville, Ga., was there present; that said McIntyre was then the attorney for the Graves heirs and representing them in litigation then before the Court; that during that day McIntyre brought a deed into his office to be witnessed; that consideration of said deed was five dollars; that real value at that time was $1500 or other large sum; that lot named in deed was No. 383, in the 8th District of Colquitt County; date of deed was July 3rd, 1894.

G. W. NEWTON,

Sworn and subscribed to before me May 3rd 1899.
[SEAL.]

J. A. WILKES,
Judge Colquitt County Court.

Affidavit of Jennie L. Graves.

STATE OF GEORGIA, *Bibb County:*

Before the undersigned personally comes Jennie L. Graves, who, being duly sworn, deposes and says that the making of tax returns for lands of complainants in Colquitt County was left by complainants to said McIntyre & McIntyre, and William McMullen, and complainants supposed that they returned lot 353 for taxation, as tax receipts were for all lands returned, and that if said lot 353 was not so returned, it was never advertised and sold for taxes, or any other

thing done to put complainants on notice; and that if affiant, or her daughters made any affidavit to the effect of affiant, Jennie L. Graves, not owning land in Colquitt County, it related or was intended to relate to land lot No. 354, levied on by attachment by Wm. McMullen, and affiant had supposed until recently that she had
488 included lot 353 in the deed to her daughters made in 1889, which deed was drawn by A. T. McIntyre, Sr., and affiant denies that she ever at any time stated to H. T. Crawford that Cyrus Graves took deed from Joel Graves as security for debt, but on the contrary, told Crawford that Cyrus Graves took said deed from Joel Graves in payment of a debt.

Affiant further says that in the month of January, 1899, she notified said Crawford in person not to cut any of the timber on said lands for turpentine or other purposes. Affiant further says that she is very unwell and not able to appear in Court, and that she has not heard the answer and affidavits of the defendants in this cause read, and that by now remaining silent affiant does not admit any of the facts in said answers and affidavits which are not herein specifically denied.

Affiant attaches receipt for taxes paid on said lands for the years 1891, 1892, 1893, 1894, 1895, 1896, 1897, and 1898.

JENNIE L. GRAVES.

Sworn and subscribed to before me this 10th day of May, 1899.

J. H. L. GERDINE,
Not. Pub., Bibb Co., Ga.

Affidavit of A. T. MacIntyre.

In the Circuit Court of U. S. for the Eastern Div., Sou. Dist. of Ga.

In Equity. Bill, etc.

JENNIE GRAVES and Others
vs.
CRAWFORD and Others.

GEORGIA, *Thomas County:*

Personally appeared before me W. C. Snodgrass, notary public, T. C., A. T. MacIntyre, who, being duly sworn, deposes and says: It is true that he, as the attorney for Samuel L. Hayes, admr. on estate of A. T. MacIntyre, Jr., Dec., applied for and obtained an order authorizing said administrator to sell at private sale lot of land No. 383, in the 8th district of Colquitt, Ga., and wrote the deed from Hayes to John McMullen and the deed from John McMullen to H. T. Crawford. But if there was combination or any fraud in said transaction, he was no party thereto, and did not know or suspect that there was; indeed, he did not know that
489 No. 383 in the 8th district was a lot claimed by complainants until they came down and notified him of the fact after they

had visited Moultrie; that he did not keep her numbers of the land in mind, and was mislead by the figures on the back of the plat and grant.

A. T. MACINTYRE.

Sworn to and subscribed before me this 5th May, 1899.

W. C. SNODGRASS,
Noty. Pub., Thos. Co., Ga.

Affidavit of E. McCranie.

STATE OF GEORGIA, *Colquitt County:*

Before me, C. C. Tyler, of said county, an officer of said State, duly authorized by law to administer oaths, personally appeared E. McCranie, of said county, who on oath says that about seven years ago he purchased the lot of land known as No. 352 in the 8th district of Colquitt County, Ga. That some time after he purchased said lot, he heard that there was some dispute about the boundary line between lots 352 and 353, it being stated that the correct line took in a narrow strip of one corner of 352 on which was the dwelling, but that affiant was never approached by any reputed owner of lot 353 in regard to said matter, nor ever paid or was required to pay any rent; that he considered said strip a part of lot No. 352, owned by him, and continued to cultivate same and keep up fences around same at his own expense; that four or five years ago he sold said lot No. 352.

his
E. x McCRANIE.
mark.

Sworn and subscribed to before me this the 2nd day of May, 1899.

C. C. TYLER,
Notary Public, Colquitt County, Ga.

490 *Affidavit of Jennie L. Graves.*

GEORGIA, *Bibb County:*

Personally comes Jennie L. Graves, who, being duly sworn, deposes and says that she has heard read the affidavit by Edward O. Thompson, offered by defendants in case of Jennie L. Graves, *et al.*, *vs.* H. T. Crawford, *et al.*; that she knows nothing of the existence at any time of any deed from Cyrus S. Graves to Abram Graves to any lot of land in Colquitt County, Ga.; that she believes no such deed ever existed, nor any kind of agreement, contract or conveyance by which the title to lot 353 in the 8th District of Colquitt County, Ga., ever passed out of said Cyrus Graves until by his death it passed by law to her and her daughters; that her husband, Cyrus S. Graves, was dead many years prior to 1865 when said Thompson

was appointed administrator of Abram Graves, and that the title to said lot being in her and her daughters, no proceedings were ever instituted to which she was a party to set up any such claim in Abram Graves, or his administrator to said lot No. 353. That her husband was a careful, painstaking man, and that she is sure that any such transactions between him and his father would have been evidenced by writings, as all their other transactions were, and from her own knowledge of her husband's business, she denies that any such deed, contract or transaction affecting the title of Cyrus S. Graves to the six lots of land in the 8th District of Colquitt County, conveyed to said Cyrus S. Graves by Joel S. Graves, ever existed.

JENNIE L. GRAVES.

Sworn to and subscribed before me this 11th day of May, 1899.

B. P. WALKER, JR.,
Notary Public, Bibb County, Ga.

Affidavit of Matthew Tucker.

STATE OF GEORGIA,
Colquitt County:

Before me, G. G. Henderson, of said county, an officer of the State, duly authorized by law to administer oaths, personally appeared Matthew Tucker, who on oath says that he is county surveyor, and that several years ago he was employed by Dr. S. P. Bower,
491 of Thomas County, to survey land lot No. 353, in the 8th District of above county; that he ran the line between said lot No. 353 and No. 352, said lot being at that time owned and occupied by one Isham Haney, and lot No. 353, being all wild land; that the said Haney had a clearing on which he had built a dwelling right on the line between lots 352 and 353 and on what he supposed and considered was his lot No. 352; that on surveying same it was discovered by me that a portion of the clearing, including the dwelling house, was by mistake over the line and on lot No. 353. Said Haney was very indignant and claimed the property as his own and affiant does not know if any possession was ever surrendered, but that the old clearing is still there. At that time it was unknown to any one that any part of lot No. 353 was cleared. As near as he can now remember affiant states that this survey was made five or six years ago; that since that time one clearing has been made on lot No. 353, known as "Cooper's Still," and that said clearing was made four years ago.

M. TUCKER.

Sworn to and subscribed before me this 2nd day of May, 1899.

[SEAL.] G. G. HENDERSON,
Clerk Supr. Ct., Colquitt Co., Ga.

Affidavit of R. H. Plant.

GEORGIA, *Bibb County:*

Before the undersigned personally comes R. H. Plant, who being duly sworn, deposes and says he was for many years acquainted with Nathan C. Munroe, of Bibb County, Ga.; that the said Nathan C. Munroe was a man of culture and refinement and is the same N. C. Munroe who gave his library of books to the Macon Public Library; that there was no other N. C. Munroe living in Bibb County, Ga., in 1863, of whom affiant had any knowledge; that he has seen the books from said library numbered 6251—"The History of Modern Greece," and "A copy of the original list of the drawing of old Irwin County;" that the signatures, N. C. Munroe, on the inside of the front and back covers of said books, is in the handwriting of said N. C. Munroe, with which signature affiant is well acquainted; that said N. C. Munroe never wrote his name Monroe; that he has seen the paper purporting to be a deed from James J. Read to Jos. A. Shewmake, dated August 6, 1863, to lot No. 383 in the 8th District of Colquitt County, Ga., and purporting
492 to be witnessed by N. C. Monroe, Not. Pub., the said deed being exhibited to affiant by M. P. Callaway, and that from affiant's knowledge of the handwriting of said N. C. Munroe, he states that the same is not in the handwriting of said N. C. Munroe, but is in the handwriting of some illiterate person unknown to affiant.

R. H. PLANT.

Sworn to and subscribed before me this 10th day of May, 1899.

CHARLES D. HURT,
N. P., Bibb Co., Ga.

List of Property Belonging to the Estate of Cyrus S. Graves, Deceased.

One house and an acre of land in Homerville.
One steam mill and fixtures in Clynch County, Ga.
Four lots of land in Colquitt Co., Eighth District, Nos. 354, 383, 384, 437.
One russet overcoat; one patent lever silver watch.

JENNIE L. GRAVES,
Adm'r Estate Cyrus S. Graves, Dec'd.

STATE OF GEORGIA, *Thomas County:*

Court of Ordinary.

DECEMBER 30, 1862.

The within and foregoing schedule or list of property belonging to the estate of Cyrus S. Graves, deceased, being this day filed in Court, it is ordered by the Court that the same be admitted to record in said Court.

Recorded December 30th, 1862.

H. H. TOOKE, *Ordinary.*

STATE OF GEORGIA, *Thomas County:*

To the Hon. Court of Ordinary of Said County:

The undersigned, your petitioner, showeth that Cyrus S. Graves departed this life possessed of some property and effects, and that there is no legal representative to take charge of, manage the same, as is necessary, an administrator should be appointed on his estate, and your petitioner, the widow of Cyrus S. Graves, being desirous of taking upon herself the responsibility of said administration, she therefore prays the order and judgment authorizing and
493 causing the usual citation to issue, notifying all persons interested of this her application for letters of administration on said estate, and in duty bound will ever pray, &c.

JENNIE L. GRAVES.

STATE OF GEORGIA, *Thomas County:*

Court of Ordinary, October, Regular Term, 1862.

Upon hearing the above and foregoing petition of Jennie L. Graves for letters of administration on estate of Cyrus S. Graves, deceased. It is ordered and adjudged by the Court that the usual notice issue notifying all persons interested of said application.

H. H. TOOKE, *Ordinary.*

STATE OF GEORGIA, *Thomas County:*

Court of Ordinary, November 3rd, Regular Term, 1862.

Jennie L. Graves, having made application by petition to this Court for letters of administration on the estate of Cyrus S. Graves, deceased, and she desiring to take upon herself said administration, and the usual citation having been given in accordance with statute and laws of said State in relation thereto, and having given bond required by this Court, and also having taken the oath as administratrix on said estate, in terms of the laws of said State, and no objection being filed in Court to her application; it is ordered and adjudged by the Court that she be and is appointed administratrix on the estate of said deceased.

H. H. TOOKE, *Ordinary.*

STATE OF GEORGIA, *Thomas County:*

Thomas Court of Ordinary.

I, Wm. M. Jones, ordinary and *ex-officio* clerk of the Court of Ordinary, which is a Court of record with a seal, do hereby certify that the above and foregoing two pages of typewritten matter is a true and correct copy of the application, order of citation and order of the Court appointing Jennie L. Graves administratrix on the estate of Cyrus S. Graves, as of record in minutes of the Court, book

'I'," page 194; also list of property rendered to the Court
494 by Jennie L. Graves, administratrix, and the order admitting the same to record, recorded in record book "F," supplement to book "H," Inventory and Appraisements, page 31.

Witness my hand and official signature and seal of office, at Thomasville, Georgia, this 17th day of March, 1903.

[SEAL.] WM. M. JONES,
Ordinary and Ex-Officio Clerk.

Assignment of Errors on Appeal to the United States Circuit Court of Appeals for the Fifth Circuit.

In the United States Circuit Court for the Eastern Division of the Southern District of Georgia.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD, W. W. ASHBURN, ET AL.

In Equity. Bill, Injunction, &c.

And now comes the appellant, W. W. Ashburn (formerly one of the respondents), and says that in the record and proceedings of the said Court in the above entitled cause and in the final decree made and entered on the 13th day of March, 1905, there is manifest error, and for error the said appellant assigns the following:

First. The Court erred in overruling the demurrer of this respondent to complainants' bill, because there was no equity in complainants' bill.

Second. The Court erred in overruling this respondent's demurrer, because complainants had an ample and complete remedy at law.

Third. The Court erred in overruling this respondent's demurrer, because from the face of the bill it did not appear that the amount involved, or claimed against this respondent, amounted to two thousand ($2,000.00) dollars.

Fourth. The Court erred in overruling this respondent's demurrer, because from the allegations in the complainants' bill the
495 deeds under which this respondent claimed the property in question did not in fact form or constitute a cloud upon complainants' title, as set forth in the bill.

Fifth. The Court erred in overruling this respondent's demurrer because this respondent claimed only one-half of lot 353, which was also claimed by all the complainants in the bill, while the principal property involved in the bill was claimed by only two of the complainants.

Sixth. The Court erred in overruling this respondent's demurrer, because the bill showed no perfect title into complainants to any of the property involved, nor were there any allegations of insolvency or other grounds for equitable relief as against this respondent.

Seventh. The Court erred in overruling this respondent's demurrer, because the complainants had been guilty of such laches and

had for such an unreasonable length of time failed to assert their claim to the property (½ of lot 353) claimed by this respondent, as to bar themselves from all relief in an equitable proceeding.

Eighth. The Court erred in overruling this respondent's demurrer, because there was no sufficient verification of the allegations of the bill.

Ninth. The Court erred in not sustaining this respondent's demurrer on each of the several grounds therein set out.

Tenth. The Court erred in decreeing that the complainants had a perfect legal title to the north half of lot three hundred and fifty-three (353), Eighth land district of Colquitt County, Georgia.

Eleventh. The Court having found and decreed from the evidence that complainants had a perfect legal title to the North half of lot 353, he erred in proceeding further in this equitable proceeding and entering a decree against this respondent. If complainants had a perfect legal title, as decreed by the Court, they had a perfect and complete remedy at law.

Twelfth. The Court erred in signing and entering said decree in said cause in favor of complainants and against this re-
496 spondent, because the decree was and is contrary to equity and equity pleadings and practice.

Thirteenth. The Court erred in enjoining this respondent from "In any manner selling, leasing, disposing of or trespassing upon lots numbers 354, 384 and the north half of lot 353, in the 8th District of Colquitt County, Georgia, or interfering with the timber or turpentine remaining thereon by cutting, boxing, leasing, selling or otherwise disposing of the same." This was and is error, because:

(*a*) There was no evidence to show or tending to show that this respondent ever had any deed or laid any claim to lots 354 or 384, but all the evidence showed that he never at any time in any way claimed said lots (354 or 384), or in any way trespassed, or attempted to trespass or threatened to trespass thereon, or had possession or attempted to exercise possession thereof.

(*b*) The evidence showed that this respondent had a good paper title to the north half of lot 353.

(*c*) The evidence showed that this respondent had a good prescriptive title to the north half of said lot 353.

(*d*) The evidence showed that complainants never until the filing of this bill claimed to own this lot (353); never returned it for taxes along with the other lots, and publicly stated and made affidavit that they did not own this lot.

(*e*) Complainants' deed under which they claim the other lots show that this lot had been sold to parties through whom this respondent claims.

Fourteenth. The Court erred in signing and entering said decree in favor of complainants for the taking and carrying away the turpentine therefrom, in the sum of $739.75, because:

(*a*) There was and is no sufficient allegations in the bill on which to base this finding.

(*b*) There was no evidence that this respondent had ever at any time taken or carried away from this property any turpentine.

497 (*c*) There was no evidence that this amount in value of turpentine had been taken and carried away from said land within four years prior to the filing of the bill.

(*d*) There was no evidence showing what the turpentine privileges were worth at the time the turpentine was taken and carried away, nor was there any evidence showing what it was worth at any time prior to the filing of the bill, on the north half of lot 353.

(*e*) There was no evidence showing what the turpentine privileges were worth at the time this respondent leased same to the party who extracted the turpentine.

(*f*) There was no evidence showing the amount of turpentine taken and carried away or the value of the same.

(*g*) The evidence showed that the timber for turpentine purposes was worth much less than this amount ($739.75).

(*h*) If any damages could have been recovered, which is denied, same could have been recovered only by the administratrix of Cyrus S. Graves.

Fifteenth. The Court erred in signing and entering the decree against this respondent for $1,076.00, or any other amount for the alleged value of the sawmill timber thereon, because:

(*a*) The Court had on application and at the instance of complainants enjoined this respondent from interfering with the sawmill timber thereon, and the evidence showed that the same was cut and used by parties other than this respondent while this injunction was still pending.

(*b*) Nothing was done by this respondent to interfere with the property subsequent to the filing of the bill, and this respondent cannot be held for the acts of others independent of himself subsequent to the filing of the bill.

(*c*) There was no evidence showing what amount of timber that was taken or carried away for sawmill purposes, nor the value of the same.

(*d*) There was no proper evidence on which to base this finding.

498 (*e*) The evidence showed that this timber was leased by this respondent to Hightower at and for a much smaller consideration than that decreed against him.

(*f*) The evidence did not show that at the time this timber passed out of this respondent and was by him leased to others, that it was worth this amount ($1,076.00), nor any like sum.

Sixteenth. The Court erred in decreeing one-fourth of the cost of the proceedings against this respondent. This was out of all proportion with the relative amount or value of the property in question claimed by this respondent, and out of all proportion with the evidence taken in behalf or against this respondent, and was and is excessive.

Seventeenth. The Court erred in signing and entering said decree in favor of complainants against this respondent, because upon the case made by complainants under the constitution and laws of the United States respondent had the right to a trial by jury, and

the assumption of equity jurisdiction and assessing damages for trespasses violated that right.

Eighteenth. The Court erred in signing and entering said decree in favor of complainants and against this respondent, because the same was and is contrary to the evidence in said cause.

Nineteenth. The Court erred in signing and entering said decree in favor of the complainants and against this respondent, because the same was and is without sufficient evidence to authorize or support it.

Twentieth. The Court erred in signing and entering said decree in favor of the complainants and against this respondent, because the pleading of the complainants and the evidence introduced upon the hearing showed such laches on the part of the complainants as to estop them from asserting any right to the relief prayed for in their bill in this cause, because they have delayed forty years to bring this suit, and in the meantime never returned the same for taxation, or otherwise asserting any claim, or giving any notice of claim in any way.

Twenty-first. The Court erred in signing and entering said decree, because evidence introduced demanded a finding that the
499 amount in controversy so far as this respondent was or is individually and separate from the other defendants concerned, is less than $2,000.00.

Twenty-second. The Court erred in not dismissing said bill, it appearing from the evidence that the amount involved so far as this respondent was and is concerned was and is less than $2,000.00.

Twenty-third. The Court erred in signing and entering said decree in favor of the complainants and against this respondent, because under the allegations in the bill and the testimony offered no particular trespass or wrong or fraud was brought home to this respondent, and no notice of any fraud was shown and no ratification thereof.

Twenty-fourth. The Court erred in signing and entering said decree in favor of the complainants and against this respondent, because the bill is defective as a bill of peace, it not appearing that the title or claim of the complainants has ever been established by any proceedings at law in any case in any Court to which this respondent was a party or privy, and it further not appearing that complainants were ever in possession of the lands in dispute.

Twenty-fifth. The Court erred in signing and entering said decree in favor of the complainants and against this respondent, because complainants have not complied with the statute law of Georgia, in that no abstract of title of complainants, and no allegation of insolvency was contained in the amended bill as required by the statute law of Georgia, and because no bond was required of complainants before granting the restraining order.

Twenty-sixth. The Court erred in signing and entering said decree in favor of complainants, because from the recitals opposite lot 353, "sold Dr. Bower," in the deed from Joel S. Graves to Cyrus S. Graves, and the testimony of E. O. Thompson taken in connection with the conduct of all the complainants and the affidavits made by

Jennie L. Graves, one of complainants (Exhibit 16), in which she a short while before the filing of this bill swore that she had no interest in lands in Colquitt County, Georgia, the Court should have found that the title had passed out of Cyrus S. Graves prior to his death.

500 Twenty-seventh. The Court erred in signing and entering said decree in favor of complainants and against this respondent, because the undisputed evidence shows that this respondent was and is the innocent purchaser on north half of lot 353; and complainants nor any of their agents ever until the filing of this bill set up any claim to it. Complainants' agents, E. O. Thompson, A. T. MacIntyre, Sr., and William McMullen, all testified that complainants had no claim to lot 353 and for that reason never returned it for taxes for complainants.

Twenty-eighth. The Court erred in signing and entering said decree in favor of complainants and against this respondent, because the evidence showed that these complainants never claimed this lot (353) until the deed records of Colquitt County, Georgia, had been destroyed by fire and the record of the conveyance out of Cyrus S. Graves had been destroyed.

Twenty-ninth. The Court erred in signing and entering said decree in favor of complainants, because the records from the office of the ordinary of Thomas County showed that Jennie L. Graves, one of the complainants, while administratrix on the estate of Cyrus S. Graves in 1862, recognized that this lot (353) did not belong to him at the time of his death and failed to administer it, though she did as such administratrix administer on the other belonging to Cyrus S. Graves, lying adjacent to this, and afterwards made deed to her daughters (the other two complainants), conveying her interest in the other lots, and did not convey this lot.

Thirtieth. The Court erred in signing and entering said decree against this respondent, because all the evidence showed and it was not disputed that this respondent was interested in and claimed only the land on the north half of lot 353, and an equitable proceeding is not the correct way to recover land held adversely.

Thirty-first. The Court erred in signing and entering the said decree in favor of complainants and against this respondent, because the undisputed evidence showed that this respondent was an innocent purchaser of said north half of lot 353, and that he and those under whom he claimed had been in *bona fide* possession thereof under duly recovered deed more than seven years.

Thirty-second. The Court erred in signing and entering
501 said decree in favor of complainants and against this respondent, because the evidence showed that this was an effort to recover from this respondent, by an equitable proceeding, land of which he was in possession, thus depriving this respondent of his constitutional right of trial by jury.

Thirty-third. The Court erred in signing and entering the said decree in favor of complainants and against his respondent, because complainants had neither paid tax upon, nor returned for tax in Georgia or elsewhere, lot 353, and the taxes had been paid by re-

spondent and those under whom he claims for forty years, and these taxes were a just charge against said land; if it had been shown that complainants were the true owners thereof, complainants should have tendered his money to respondent, or been required by the Court to account for it.

Thirty-fourth. The Court erred in signing and entering said decree in favor of complainants and against this respondent, because the transcript of record from the Court of Ordinary of Thomas County, Georgia, showed that there was an administratrix on the estate of Cyrus S. Graves and the administratrix alone could sue to recover land and the damages thereto.

Thirty-fifth. The Court erred in signing and entering said decree in favor of complainants and against this respondent, because the evidence showed that complainants being out of possession were trying to have deeds of this respondent, who was in possession, cancelled.

Thirty-sixth. The Court erred in signing and entering said decree in favor of complainants and against this respondent, because while the bill set up a case of actual fraud and made that the ground of the prayer for relief, the evidence failed to develop any fraud on the part of this respondent, or on the part of any one in connection with the property claimed by this respondent (north half of lot 353).

Thirty-seventh. The Court erred in signing and entering said decree in favor of complainants and against this respondent, because the evidence did not sustain the allegations in complainants' bill.

Thirty-eighth. The Court erred in signing and entering said decree in favor of complainants and against this respond-
502 ent, because if complainants are entitled to recover any damages, which is denied, the damages awarded are excessive.

Thirty-ninth. The Court erred in signing and entering said decree in favor of complainants and against this respondent, because the evidence showed, and clearly established, that this respondent was and is the true legal and equitable owner of the north half of lot 353, 8th land district of Colquitt County, Georgia, and he was in no wise interested in or connected with any other properties or issues involved in the proceedings.

ROBT. L. SHIPP,
Solicitor for Appellant, W. W. Ashburn.

Moultrie, Ga.

(Indorsement:) Circuit Court of U. S., Eastern Division, Southern District of Ga. Jennie L. Graves, *et al., vs.* H. T. Crawford, W. W. Ashburn, *et al.* Assignment of errors. Filed August 11th, 1905. T. F. Johnson, Clerk. Shipp & Kline, Attorneys at Law, Moultrie, Ga.

Summons and Severance.

The Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD, W. W. ASHBURN, ET AL.

To H. T. Crawford, William McMullen, John W. Hightower and the Union Lumber Company:

You are hereby invited to join with me (W. W. Ashburn) on or before the 27th day of July, 1905, to prosecute an appeal in the above entitled cause, returnable to the United States Circuit Court of Appeals for the Fifth Circuit, to reverse the decree in the above entitled cause rendered against us jointly on the 13th day of March, 1905, or you will be deemed to have acquiesced in the said decree and I will prosecute said appeal without joining you as a party.

This July 13th, 1905.

ROBT. L. SHIPP,
Solicitor for W. W. Ashburn.

503 Service of the above is accepted this 14th day of July, 1905.

ADAMS & ADAMS,
Solicitors for H. T. Crawford.
W. C. McCALL,
Solicitor for Wm. McMullen.

The Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD, W. W. ASHBURN, ET AL.

GEORGIA, *Colquitt County:*

Personally comes Robt. L. Shipp, solicitor for W. W. Ashburn, and on being duly sworn deposes and says that as such attorney for W. W. Ashburn he did on the 14th day of July, 1905, serve notice of appeal on John W. Hightower and the Union Lumber Company by handing said notice to N. E. Harris, Esq., solicitor for said John W. Hightower and the Union Lumber Company, in the above stated

matter. A true and correct copy of the notice so served is hereto attached.

ROBT. L. SHIPP.

Sworn to and subscribed before me, this August 10th, 1905.
[SEAL.] Z. H. CLARK,
N. P., C. Co., Ga.

The Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD, W. W. ASHBURN, ET AL.

The defendant, H. T. Crawford, acknowledges notice of appeal in the above stated matter on the part of W. W. Ashburn, one of the defendants, and hereby declines to join in said appeal.

ADAMS & ADAMS,
Solicitors for H. T. Crawford.

July 14, 1905.

504 The defendant, Wm. McMullen, acknowledges notice of appeal in the above stated matter on the part of W. W. Ashburn, one of the defendants, and hereby declines to join in said appeal.

W. C. McCALL.
Solicitor for Wm. McMullen.

July 14, 1905.

(Indorsement:) U. S. Circuit Court, Eastern Division, Southern District of Georgia. Jennie L. Graves *vs.* H. T. Crawford, W. W. Ashburn, *et al.* Summons, etc., for severance on behalf of W. W. Ashburn. Filed Sept. 1st, 1905. T. F. Johnson, Clerk.

Petition for Allowance of Appeal.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL., Complainants,
vs.
H. T. CRAWFORD, W. W. ASHBURN, ET AL., Respondents.

To the Honorable the Judges of Said Court:

W. W. Ashburn, one of the above named defendants, conceiving himself aggrieved by the decree made and entered in this cause on

the 13th day of March, A. D. 1905, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that his appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit, and that said decree may be reversed; your petitioner further prays that the proper order touching the security to be required of him to perfect his appeal be made, and desiring to supersede the execution of the decree, petitioner here tenders bond in such amount as the Court may require for such purpose and prays that with the allowance of the appeal a supersedeas be issued.

ROBT. L. SHIPP,
Solicitor for Appellant, W. W. Ashburn.

505 The severance is allowed. Appeal by W. W. Ashburn alone is allowed, but without supersedeas; bond for costs is fixed at $500.00, which may be approved by the clerk.
August 12, 1905.

DAVID D. SHELBY,
U. S. Circuit Judge.

(Indorsement:) U. S. Circuit Court, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al., vs.* H. T. Crawford, W. W. Ashburn, *et al.* Petition for appeal in behalf of W. W. Ashburn. Filed Sep. 1st, 1905. T. F. Johnson, Clerk.

* * * * * * *

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity. Bill, etc.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD, W. W. ASHBURN, ET AL.

Know all men by these presents, That we, W. W. Ashburn, as principal, and Zach H. Clark, and John R. Hall, as sureties, are held and firmly bound unto Jennie L. Graves, Ida J. Graves and Minnie C. Graves, appellees, in the above cause, their heirs, executors, administrators and assigns, in the sum of five hundred ($500.00) dollars, to the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this the 30th day of August, in the year of our Lord nineteen hundred and five (1905), conditioned, whereas, lately in said Circuit Court of the United States for the Eastern Division of the Southern District of Georgia, in a suit pending in said Court,

between Jennie L. Graves, Ida J. Graves and Minnie C. Graves, complainants, and H. T. Crawford and W. W. Ashburn, *et al.*, respondents, a decree was rendered against said W. W. Ashburn and others, and the said W. W. Ashburn having obtained order allowing an appeal therefrom to the United States Circuit Court of Appeals for the Fifth Circuit, to reverse the decree in the aforesaid suit.

Now, therefore, the condition of the above obligation is such that if the above named W. W. Ashburn shall prosecute said appeal to effect and answer all costs if he fails to make good his plea,
506 then the above obligation shall be void, otherwise to remain in full force and effect and virtue.

[SEAL.] W. W. ASHBURN.
[SEAL.] J. R. HALL.
[SEAL.] Z. H. CLARK.

Signed, sealed in the presence of:
D. F. ARTHUR,
[SEAL.] M. M. STANALAND,
Notary Public, Colquitt County, Georgia.

This bond is approved this 1st day of September, 1905, the same being a cash bond for $500 hereto attached.

[Seal U. S. Circuit Court.]

DAVID D. SHELBY,
U. S. Circuit Judge.
T. F. JOHNSON,
Clerk U. S. Circuit Court.

Stipulation Between Solicitors.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

In Equity.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD, W. W. ASHBURN, ET AL.

Stipulation.

Whereas W. W. Ashburn, one of the defendants, has entered his appeal to the Circuit Court of Appeals for the Fifth Circuit from the decree rendered on the 13th day of March, 1905, by said Circuit Court, and making said Jennie L. Graves, Ida J. Graves and Minnie C. Graves appellees.

And whereas Jennie L. Graves, Minnie C. Graves and Ida J. Graves, the complainants, are contemplating taking an appeal or cross appeal to the said Circuit Court of Appeals from said decree,

making said W. W. Ashburn and H. T. Crawford and John McMullen appellees; and, whereas, in both appeals the record on which said decree was rendered, to be sent up on appeal, would be the same.

It is agreed between the parties evidenced by the signatures of their counsel hereto, as follows:

1. That the clerk of the Circuit Court shall send up only one transcript of the record which shall contain, in addition to the record of the case as tried, the additional papers pertaining to both
507 of said appeals, and that said transcript shall be considered as belonging to each and both of said appeal causes.

2. That the Wright, Betts & Co. *vs.* J. S. Graves, *fi. fa.*, referred to in the record as Exhibit 2, and also Exhibit 50 and 51, all pertaining solely to the controversy between the said complainants and Holmes and Hall, shall be omitted from the transcript.

3. That Exhibit 33, in evidence, designated as the Land Book of Irwin County, Georgia, shall not be copied in the record, but in lieu thereof, the clerk shall note at the place where it would appear in the transcript, the following entry:

"EXHIBIT 33.

"Land Book of Irwin County, referred to in evidence as from Munroe Library of the Public Library at Macon, omitted from transcript by stipulation. The fly leaf of said book containing the name of N. C. Munroe, written in ink. The original book sent up to the Circuit Court of Appeals by stipulation for inspection of handwriting."

4. That the following original documents in evidence, though copied in the transcript, shall be sent up to the Circuit Court of Appeals for their inspection, if such inspection is desired by any party to said appeals, to-wit:

Exhibits 1, 3, 4, 6, 7, 8, 9, 10, 11; 21; 22; 23; 31; 32; 33, 34, 38, 39, 40, 41, 42, 54; 55; 56; as referred to in the testimony in the cause.

5. It is further stipulated that the said Graves, complainants, will advance to the clerk of the Circuit Court one-half of the cost of making up the transcript for said appeals, and that said W. W. Ashburn will advance to said clerk one-half the cost of making up the transcript.

And that said Graves, complainants, will advance to the clerk of the Circuit Court of Appeals one-half the cost of printing the record, and that said W. W. Ashburn will advance said clerk the other half the cost of printing the record.

But this clause of the agreement shall be without prejudice to the right of either party to have a judgment against the other for the costs paid out by them, as the Court may award the costs.

6. That there shall be a stay of execution on decree of
508 March 13, 1905, until the said appeals have been disposed of by the Circuit Court of Appeals.

7. That the printing of the record on appeal may be so done as

to allow the case to go over to the term of the Circuit Court of Appeals following that which convenes in October.

This August 29, 1905.

MARION ERWIN,
Solicitor for Jennie L. Graves, Ida J. Graves, and Minnie C. Graves.
SAML B. ADAMS,
Solicitor for H. T. Crawford.
W. C. McCALL,
Solicitor for John McMullen.
ROBT. L. SHIPP,
Solicitor for W. W. Ashburn.

Clerk's Certificate.

Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD ET AL.

Appeal of W. W. Ashburn, One of the Respondents.

I, T. F. Johnson, Clerk of the Circuit Court of the United States for the Southern District of Georgia, do hereby certify that the above and foregoing writing annexed to this certificate is a true, correct and complete transcript of the record as directed by law to be made, and true, correct and complete copies of the proofs and of such entries and papers of file as may be necessary on the hearing of the appeal of W. W. Ashburn, one of the respondents in the case of Jennie L. Graves, *et al., vs.* H. T. Crawford, *et al.*, lately pending in the said Circuit Court, and appealed by the respondent, W. W. Ashburn, to the United States Circuit Court of Appeals, for the Fifth Circuit.

In witness whereof I have hereunto set my hand and affixed the seal of said Circuit Court, at Savannah, Georgia, this 6th day of September, A. D. 1905.

[SEAL.] T. F. JOHNSON, *Clerk.*

509 *Transcript of Record.*

United States Circuit Court of Appeals, Fifth Circuit.

No. 1525.

JENNIE L. GRAVES ET AL., Appellants,
versus
W. W. ASHBURN ET AL., Appellees.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

Original Record Filed Nov. 14, 1905.

U. S. Circuit Court of Appeals. Filed Jul- 3, 1906.
CHARLES H. LEDNUM, *Clerk.*

510 In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

JENNIE L. GRAVES ET AL., Complainants, Appellants,
versus
H. T. CRAWFORD, W. W. ASHBURN, and JOHN McMULLIN, Respondents, Appellees.

In Equity.

Appeal from Decree of March 13, 1905, of said Circuit Court to the Circuit Court of Appeals for the Fifth Circuit.

Assignment of Errors.

And come now Jennie L. Graves, Ida J. Graves and Minnie C. Graves, complainants in the above stated cause, and appellants and cross-appellants therein, and say that in its decree rendered on March 13th, 1905, in said cause, by the said Circuit Court, the said Court committed manifest error, in this:

I.

That it therein decreed as follows: "That the complainants have a complete remedy at law as to the case made by the evidence in support of the bill as against H. T. Crawford, and the bill is dismissed as to the said H. T. Crawford, with costs against complainants, for want of equitable cognizance, without prejudice to the right of the complainants, if any they have, to recover said lot of land No. 383, in the 8th District of Colquitt County, Georgia, and the south half of lot No. 353 in said 8th District of Colquitt County, Georgia, and the value of the turpentine and timber claimed to have

been taken therefrom, by appropriate action at law. The title to said lot 383 and the south half of lot 353 not being passed on herein."

511 II.

And because the complainants did not have at the time of the filing of the suit nor at any time since have the complainants had a complete and adequate remedy at law, as against the wrongs and injuries inflicted upon them by him, and threatened them by him in relation to said lot of land No. 383, and the said south half of lot of land No. 353, and the turpentine and timber therein and thereon, as set forth in said bill and as established by the evidence in the record in support thereof.

III.

That the said Circuit Court committed error in not decreeing.

(*a*) That the complainants had by the evidence established a complete, perfect and fee simple title in themselves to said lot of land No. 383 and the said south half of lot of land No. 353, in the 8th District of Colquitt County, Georgia; the title deeds showing a perfect title in complainants to said lots of land, being all duly recorded in the county records where the lands lay, as required by the laws of Georgia for constructive notice to the world, prior to the acquisition of any title or pretended title claimed by said H. T. Crawford.

(*b*) That the said H. T. Crawford, neither prior to the filing of the bill or since, acquired or had any legal or valid claim, right or title in or to said lot of land No. 383, or the south half of said lot 353, or any part thereof, or in or to the turpentine therein or timber thereon.

(*c*) That on November 9th, 1898, the said lot of land No. 383 was not under fence or otherwise improved and was covered with a virgin forest of pine timber and was what is generally known as wild lands, though exceedingly and especially valuable for the turpentine and timber contained in said pine forests thereon, and because said lots were situate immediately on or adjacent to a newly built railroad, and within two miles of the growing town of Moultrie, the county seat of said Colquitt County, and because of the rapid and great advances which were being made in the market values of turpentine and timber products; that on that date the said H. T. Crawford, with full legal notice of complainants' title and right,
512 purchased said lot of land No. 383, at a price much less than its then value, from the defendant, John McMullen, who had no valid title thereto or right to sell the same, and who claimed title thereto only under a chain of deeds, in which several of the deeds constituting the links in the chain are conclusively shown by the evidence to be forgeries, and the whole chain of deeds is shown by the evidence to be fraudulent.

(*d*) That said H. T. Crawford commenced his first trespass upon said lot of land No. 383 in the spring of 1899 by boxing the trees

thereon for turpentine, and threatening, by continuing trespasses, the total destruction of the timber thereon, to the irreparable injury of the complainants.

That immediately upon a knowledge of said trespasses having been obtained by complainants, they, on April 29th, 1899, filed their bill in this cause, setting forth therein among other things, their own title and right to the property in controversy, the fraudulent character of the claims of said H. T. Crawford, the manner of his acquisition of his claims, and seeking to enjoin the said continuing trespasses, and to have a decree, cancelling as a cloud upon complainants' title, the false and forged deeds under which said Crawford was claiming a right to said turpentine and timber, and which acts of continuing trespass, coupled with the claim of right under said forged and fraudulent deeds, threatened to create a title by prescription, under color of title, in the said Crawford, unless restrained, and the deeds cancelled while the evidence of the forged and fraudulent character of said deeds was obtainable.

That service of process of subpœna issue on said bill was duly made upon said H. T. Crawford, and he duly appeared and answered.

(*e*) That there was equity in the bill at the time of the filing of the bill and the commencement of the suit and as established by the proof, to restrain said continuing trespasses so committed by said H. T. Crawford, which were inflicting and threatening to inflict irreparable injury upon complainants by the destruction of timber on said lands; that no action at law could have afforded an adequate remedy for the injuries commenced, continuing and threatened for the future to the timber on said lands. That there was equity in the bill and as established by the proof, to decree a cancellation of the forged and fraudulent deeds to said lot of land No. 383, brought into Court by said H. T. Crawford, as links
513 in his chain of title, and which deeds are conclusively shown by the evidence to be false, spurious and forged.

(*f*) That immediately upon the filing of the bill the complainants having obtained an order of the said Circuit Court in said cause, requiring the said H. T. Crawford, among other things, to show cause why he should not be restrained from further trespassing upon said lot of land No. 383 and the south half of said lot 353, the said H. T. Crawford filed his answer and affidavit in reply thereto, setting forth, among other things, that he had already boxed the trees on said lot 383 for turpentine, that unless said turpentine operations were continued that the entire timber on said lot was liable to be destroyed by forest fires pending the litigation, that he was entirely solvent and able to respond in damages, and praying that he be not restrained pending the litigation, and that thereupon the Court refused to restrain said Crawford *pendente lite*.

(*g*) That thereafter said H. T. Crawford continued his turpentine operations on lot No. 338 until August 28, 1899, when, in consideration of $1,120.00, he leased his alleged interest therein for turpentine purposes, for the balance of the year 1899 and years 1900, 1901 and 1902, to W. W. Ashburn, who was at the time a defendant to the

bill and himself under restraining order forbidding him to interfere *pendente lite* with the lands in controversy; and the said W. W. Ashburn continued said turpentine operations on lot No. 383, under said Crawford, during the period of said lease.

That thereafter, on December 26, 1899, the said H. T. Crawford executed a lease for the express purpose of having the timber on said lot No. 383 cut and converted into lumber, to the firm of H. T. Crawford and R. J. Corbett, and then sold out his interest therein for the sum of $6,000.00. And the said R. J. Corbett, under said lease and transfer, or pretended transfer, from said Crawford, cut and carried away *pendente lite* all the timber on said lot 383, leaving nothing but the land denuded of all marketable timber suitable for saw mill purposes.

(*h*) That the said wrongful acts of the said H. T. Crawford and W. W. Ashburn in boxing the trees and taking away and converting to their own uses the turpentine products on lot 383 pend-
514 ing the litigation, and the said wrongful acts of the said H. T. Crawford and his partner, R. J. Corbett, in cutting and carrying away all the sawmill timber on said lot, pending the litigation, cannot destroy the jurisdiction of the Court and its equitable cognizance of the subject matter which attached under the conditions existing at the commencement of the suit; and since the Court can no longer afford full relief by perpetual injunction as to the timber, because the timber has been wilfully destroyed and converted by the said Crawford and the said Ashburn, and those acting under them, pending the litigation, the Court has equitable cognizance of the Cause to require from them an accounting for the value of the products so taken away, and to award the complainants damages therefor.

(*i*) That the following described deeds in the chain of title to lot No. 383, produced in evidence, by said H. T. Crawford, be cancelled as fraudulent, fictitious and forged and as constituting a cloud upon complainants' title to lot No. 383, to-wit:

Exhibit number.	Description.
6.	Deed, Joel S. Graves to James Redd or Read.
7.	Deed, James Read to J. A. Shewmake.
8.	Joseph A. Shewmake to M. Hobbs.
9.	Joseph A. Shewmake to I. M. Wilkes.
10.	Deed, I. M. Wilkes to R. G. Wilby.
11.	Deed, Marshall Hobbs to R. G. Wilby.
14.	John McMullin to H. T. Crawford.

(*j*) That the defendants, H. T. Crawford and W. W. Ashburn, and their agents, attorneys and assignees or grantees, *pendente lite*, be perpetually enjoined from in any manner trespassing upon said lot No. 383 in the 8th District of Colquitt County, Georgia, or selling or disposing of the same, or any of the products thereof, and from interfering with the complainants in the peaceful enjoyment thereof.

(*k*) That said complainants have judgment against said H. T.

Crawford and W. W. Ashburn for the full market value of the turpentine and lumber products taken by them or taken under leases or authorizations made by them pending the litigation, from said lot of land No. 383 pending the suit, and that complainants have leave by supplemental testimony to be taken, to show the said values, or in lieu thereof complainants may, at their election, take a supplemental decree herein against said Ashburn and said Crawford for the sum of $1,120.00 for the value of the turpentine privileges on said lot, as fixed by them in the lease made by said Crawford to Ashburn on August 28, 1899, and a decree against H. T. Crawford for the sum of $6,000, realized by him in the transfer to R. J. Corbett of his alleged claims to said land.

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IV.

That the Court committed error in not decreeing in said decree as follows:

(*a*) That the said H. T. Crawford produced in evidence in support of his claim to the south half of said lot of land No. 353, a chain of deeds commencing from a deed of P. M. Bower to M. M. Blanton for an undivided half interest in said lot No. 353, and which deed when offered in evidence purported to be dated November 14, 1892, but which shows on close inspection that it originally bore date Nov. 14, 1893, and that the date of the deed has been altered. That the undisputed testimony of the grantee shows it was not made until 1893, showing that the date has been changed since its execution. That no evidence is produced showing any title to said lot in said P. M. Bower, the grantor of said Blanton, and therefore said Crawford's claim of title through said Bower is worthless as a legal title and worthless as prescriptive title, even if the said deed from Bower, in November, 1892, (instead of 1893, when it was made), since the suit was brought on April 29, 1899, when less than seven years from the date of the deed, as the evidence is conclusive that no trespassing was done or attempt made to take possession of the south half of lot 353 under the Bower deed until after 1893. That the evidence conclusively establishes that said H. T. Crawford stood at the time of the filing of the bill, and now stands in reference to said south half of lot No. 353, solely as a trespasser thereon, without a legal title, without prescription and claiming under a deed altered and dated back, and which alteration not having been explained must be taken as having been made with intent on the part of said Crawford, or on the part of a predecessor in title, to claim a fraudulent prescription.

(*b*) That at the time of the filing of the bill said H. T. Crawford was operating a turpentine still on a corner of the south half of lot 353 and threatening to mature a 7 years' prescriptive title under color of said altered and fraudulent Bower deed; and there was equity in the bill then, and there is equitable cognizance now, to restrain said Crawford from further trespassing on said south half of lot 353, and to decree a cancellation of said fraudulent Bower deed held by said Crawford as color of title, and it is so decreed.

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(*c*) That inasmuch as said H. T. Crawford was asserting a claim to the entire south half of lot No. 353 under an alleged deed from said Bower conveying only an undivided half interest in the whole lot 353; and inasmuch as W. W. Ashburn was asserting a claim to the entire north half of lot No. 353, under a deed from McIntyre and Watson, conveying only an undivided half interest in the whole lot 353; the alleged paper titles asserted by said Crawford and by said Ashburn made them tenants in common to the whole of lot 353, and therefore the said Crawford and the said Ashburn were necessary and proper defendant parties to complainants' bill to clear the title to lot 353, and as to each half or any portion of it, and there was equity in the bill to give relief as to both of them.

(*d*) That the evidence further shows that during the pendency of this suit, said H. T. Crawford has conveyed the south half of lot 353 to said defendant, W. W. Ashburn; and the Court has equitable cognizance of the subject matter and of the parties to decree a cancellation of said deeds and conveyances and clouds put upon complainants' title to the south half of lot 353 by the parties to the suit, pending the suit, and so decrees.

(*e*) That said defendants, H. T. Crawford and W. W. Ashburn, and their agents, attorneys and assignees or grantees *pendente lite* be perpetually enjoined from in any manner trespassing upon said south half of lot 353 in the 8th District of Colquitt County, Georgia, or selling or disposing of the same, or any of the products thereof, and from interfering with the complainants in the peaceful enjoyment thereof.

V.

That the Court erred in said decree in not decreeing that the costs of suit so far as the same pertained to the issues in respect to lot of land No. 383 and the south half of lot of land No. 353, in said 8th District of Colquitt County, Georgia, be awarded against said H. T. Crawford and W. W. Ashburn, and not against complainants.

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VI.

Wherefore, the said Jennie L. Graves, Minnie C. Graves and Ida J. Graves, pray that the said decree of March 13, 1905, be revised as to the matters on which errors are herein assigned.

MARION ERWIN,
Solicitor for Jennie L. Graves, Ida J. Graves and Minnie C. Graves.

(Indorsement:) In the U. S. Circuit Court, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al.*, Appellants, *vs.* H. T. Crawford, W. W. Ashburn, *et al.*, Appellees. Assignments of Error. Filed Sept. 11, 1905. T. F. Johnson, Clerk.

Appeal of Jennie L. Graves, Ida J. Graves and Minnie C. Graves.

Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

JENNIE L. GRAVES, IDA J. GRAVES, and MINNIE C. GRAVES, Complainants, Appellants,
versus
H. T. CRAWFORD, W. W. ASHBURN, and JOHN McMULLIN, Respondents, Appellees.

Appeal.

The above named complainants conceiving themselves aggrieved by the decree entered on the 13th day of March, 1905, in the above entitled proceeding, doth hereby appeal from said order and decree to the Circuit Court of Appeals of the United States for the 5th Circuit, and they pray that this their appeal may be allowed; and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to said Circuit Court of Appeals, and they have filed herewith their assignment of errors.

MARION ERWIN,
Solicitor for Jennie L. Graves, Ida J. Graves and Minnie C. Graves.

518 And now, to-wit, on this 6th day of September, 1905, it is ordered that the appeal be allowed as prayed for.

DAVID D. SHELBY,
U. S. Circuit Judge.

(Indorsement:) In U. S. Circuit Court, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al.*, appellants, *vs.* H. T. Crawford, W. W. Ashburn, *et al.*, appellees. Appeal. Filed Sep. 11, 1905. T. F. Johnson, Clerk.

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Bonds for Costs on Appeal.

Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

JENNIE L. GRAVES ET AL., Complainants, Appellants,
vs.
H. T. CRAWFORD ET AL., Respondents, Appellees.

Know all men by these presents, That we, Jennie L. Graves, Ida J. Graves, Minnie C. Graves, and George L. Warren, all of the town of Cortland, County of Cortland and State of New York, are held and firmly bound unto H. T. Crawford, W. W. Ashburn & John

McMullin, respondents and appellees in the above stated cause, in the sum of two hundred and fifty dollars, to be paid to the said H. T. Crawford, W. W. Ashburn and John McMullin, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals and dated the 28th day of August, A. D. 1905.

Whereas, the above named Jennie L. Graves, Ida J. Graves and Minnie C. Graves, the complainants and appellants in the above stated cause are presenting an appeal to the Circuit Court of Appeals of the United States for the 5th Circuit, to revise the decree rendered in the above entitled suit on the 13th day of March, A. D. 1905, by the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia; now, therefore, the condi-
519 tion of this obligation is such that if the above named Jennie L. Graves, Ida J. Graves & Minnie C. Graves, shall prosecute said appeal to effect and answer all costs and damages if they fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL.] JENNIE L. GRAVES.
[SEAL.] IDA J. GRAVES.
[SEAL.] MINNIE C. GRAVES.
[SEAL.] GEORGE L. WARREN.

Approved Sept. 6, 1905.

DAVID D. SHELBY,
U. S. Circuit Judge.
T. F. JOHNSON,
Clerk U. S. Cir. Court.

[Seal of Circuit Court.]

Taken and acknowledged, signed, sealed and delivered this 28th day of August, A. D. 1905, before me.

[SEAL.] HENRY A. DICKINSON,
Notary Public for the County of Cortland, State of New York.

STATE OF NEW YORK, *Cortland County:*

Before the undersigned personally comes George L. Warren, of said County and State, surety on the foregoing bond, who being duly sworn deposes and says, that he owns in his own right real estate in said State and County of the value of five hundred dollars and more, over and above his just debts and liabilities and exemptions by law, and free from encumbrance.

GEORGE L. WARREN.

Sworn and subscribed before me this 28th day of August, A. D. 1905.

[SEAL.] HENRY A. DICKINSON,
Notary Public for the County of Cortland, State of New York.

(Indorsement:) In the U. S. Circuit Court, Eastern Division, Southern District of Georgia. Jennie L. Graves, *et al.*, appellants, *versus* H. T. Crawford, *et al.*, appellees. Bond for costs on appeal. Filed Sept. 11, 1905. T. F. Johnson, Clerk.

520 *Order Directing Certain Original Exhibits to be Sent up to the Circuit Court of Appeals for Inspection by the Court.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

JENNIE L. GRAVES ET AL., Complainants, Appellants,

vs.

H. T. CRAWFORD, W. W. ASHBURN, JOHN MCMULLIN, Respondents, Appellees.

Appeal and Cross Appeal.

It appearing proper that the original papers designated in the record of said cause as *Exhibits 1, 3, 4, 6, 7, 8, 9, 10, 11, 21, 22, 23, 31, 32, 33, 34, 38, 39, 40, 41, 42, 54, 55 and 56, as referred to in the testimony in the cause, should be inspected, on the appeals taken, by the Circuit Court of Appeals:

On motion of counsel for the complainants, appellants, and in pursuance of the stipulation of counsel filed herewith, it is ordered that the clerk of said Circuit Court shall transmit said original papers by express to the clerk of said Circuit Court of Appeals, who shall safely keep the same subject to inspection of said Circuit Court of Appeals, and return the same after the final disposition of said appeals.

(This order is made by me because it is shown that the trial Judge is temporarily absent from the district.)

Dated this 8th day of September, 1905.

DAVID D. SHELBY,
U. S. Circuit Judge.

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*The original exhibits enumerated were sent up to the clerk of the Circuit Court of Appeals with transcript on appeal of W. W. Ashburn.

521 *Stipulation Between Counsel.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia. In Equity.

JENNIE L. GRAVES ET AL.
vs.
H. T. CRAWFORD, W. W. ASHBURN, ET AL.

Stipulation.

Whereas W. W. Ashburn, one of the defendants, has entered his appeal to the Circuit Court of Appeals for the 5th Circuit, from the decree rendered on the 13th day of March, 1905, by said Circuit Court, and making said Jennie L. Graves, Ida J. Graves and Minnie C. Graves appellees.

And whereas, Jennie L. Graves, Minnie C. Graves and Ida J. Graves, the complainants, are contemplating taking an appeal or cross appeal to the said Circuit Court of Appeals from said decree, making said W. W. Ashburn and H. T. Crawford and John McMullen, appellees; and whereas in both appeals the record on which said decree was rendered, to be sent up on appeal would be the same.

It is agreed between the parties evidenced by the signature of their counsel hereto, as follows:

1. That the clerk of the Circuit Court shall send up only one transcript of the record which shall contain in addition to the record of the case as tried, the additional papers pertaining to both of said appeals, and that said transcript shall be considered as belonging to each and both of said appeal cases.

2. That the Wright, Betts & Co. *vs.* J. S. Graves, *fi. fa.* referred to in the record as Exhibit 2, and also Exhibit 50 and 51, all pertaining solely to the controversy between the said complainants and Holmes and Hall shall be omitted from the transcript.

3. That Exhibit 33, in evidence, designated as the Land Book of Irwin County, Georgia, shall not be copied in the record, but in lieu thereof the clerk shall note at the place where it should appear in the transcript the following entry:

"Exhibit 33. Land Book Irwin County, referred to in evidence as from Monroe Library of the Public Library of Macon, omitted from transcript by stipulation. The fly leaf of said book
522 containing the name of N. C. Monroe, written in ink. The original book sent up to the Circuit Court of Appeals by stipulation for inspection of handwriting.

4. That the following original documents in evidence, though copied in the transcript shall be sent up to the Circuit Court of Appeals for their inspection, if such inspection is desired, by the party to said appeals, to-wit:

Exhibits 1, 3, 4, 6, 7, 8, 9, 10, 11, 21, 22, 23, 31, 32, 33, 34, 38, 39, 40, 41, 42, 54, 55, 56, as referred to in the testimony in the cause.

5. It is further stipulated that the said Graves, complainants, will advance to the clerk of the Circuit Court one-half of the cost of making up the transcript for said appeal, and that said W. W. Ashburn will advance to said clerk one-half the cost of making up the transcript.

And that said Graves, complainants, will advance to the clerk of the Circuit Court of Appeals one-half the cost of printing the record, and that said W. W. Ashburn will advance said clerk the other half the post of printing the record.

But this clause of the agreement shall be without prejudice to the right of either party to have a judgment against the other for the costs paid out by them, as the Court may award the costs.

6. That there shall be a stay of execution on decree of March 13, 1905, until the said appeals have been disposed of by the Circuit Court of Appeals.

7. That the printing of the record on appeal may be so done as to allow the case to go over to the term of the Circuit Court of Appeals following that which convenes in October.

MARION ERWIN,
Solicitor for Jennie L. Graves, Ida J. Graves, and Minnie C. Graves.
SAM'L B. ADAMS,
Solicitor for H. T. Crawford.
W. C. McCALL,
Solicitor for John McMullen.
SHIPP & KLINE,
ROBT. L. SHIPP,
Solicitor for W. W. Ashburn.

Filed September 11th, 1905.

T. F. JOHNSON, *Clerk.*

523 *Clerk's Certificate.*

In the Circuit Court of the United States, Eastern Division, Southern District of Georgia.

JENNIE L. GRAVES IDA J. GRAVES, and MINNIE C. GRAVES, Complainants, Appellants,
vs.
H. T. CRAWFORD, W. W. ASHBURN, JOHN McMULLEN, Respondents, Appellees.

I, T. F. Johnson, Clerk of the Circuit Court of the United States for the Southern District of Georgia, do hereby certify that the above and foregoing writing annexed to this certificate is a true, correct and complete transcript of the record, as directed by law to be made, and true, correct and complete copies of the proofs and of such entries and papers on file as may be necessary on the hearing of the appeal in the case of Jennie L. Graves, *et al.*, complainants, appellants, *versus* H. T. Crawford, W. W. Ashburn, *et al.*, respondents,

appellees, lately pending in the said Circuit Court and appealed by the complainants to the United States Circuit Court of Appeals for the Fifth Circuit.

In witness whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, at Savannah, Georgia, this 20th day of September, A. D. 1905.

[SEAL.] T. F. JOHNSON, *Clerk.*

524 United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the foregoing printed records of 508 pages, in the case of W. W. Ashburn against Jennie L. Graves, *et al.*, numbered 1506, and 14 pages in the case of Jennie L. Graves, *et al.*, against W. W. Ashburn, *et al.*, numbered 1525, were printed under my supervision, and are identical with the printed records upon which said causes were heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 7th day of December, A. D. 1907.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM
Clerk of the United States Circuit Court of Appeals.

525 Pleas and proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on the first Monday in October, A. D. 1906, at Atlanta, Georgia, and on the third Monday in November, A. D. 1906, at New Orleans, Louisiana, before the Honorable Don A. Pardee and the Honorable David D. Shelby, Circuit Judges, and the Honorable Edward R. Meek, District Judge.

Be it remembered that heretofore, to-wit: on the 8th day of September, A. D. 1905, a transcript of record, pursuant to an order of appeal from the Circuit Court of the United States for the Southern District of Georgia, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, wherein W. W. Ashburn was appellant and Jennie L. Graves and others were appellees, which said transcript of record was filed and docketed in said Circuit Court of Appeals as No. 1506.

And be it remembered that heretofore, to-wit: on the 14th day of November, A. D. 1905, a transcript of record pursuant to an order of appeal—on cross appeal—from the Circuit Court of the United States for the Southern District of Georgia, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, wherein Jennie L. Graves, *et al.*, were appellants, and W. W. Ashburn, *et al.*, were appellees, which said transcript of record was filed and docketed in said Circuit Court of Appeals as No. 1525.

That thereafter the following proceedings were had in said causes in said Circuit Court of Appeals, viz:

Argument and Submission.

No. 1506.

W. W. ASHBURN
vs.
JENNIE L. GRAVES ET AL.

OCTOBER 5, 1906.

On this day this cause was regularly called, and after argu-
525 ment by Robert L. Shipp, Esq., for appellant, was submitted to the Court on briefs filed and to be filed.

No. 1525.

JENNIE L. GRAVES ET AL.
vs.
W. W. ASHBURN ET AL.

OCTOBER 5, 1906.

On this day this cause was regularly called, and was submitted to the Court on record and briefs to be filed.

And thereafter on December 6th, 1906, an application to make Anna P. Ashburn, executrix, party was filed in said Circuit Court of Appeals in said cause, in words and figures following, to-wit:

Application to Make Anna P. Ashburn, Executrix, Party.

United States Circuit Court of Appeals, Fifth Circuit.

No. 1506.

W. W. ASHBURN, Appellant,
vs.
JENNIE L. GRAVES ET AL.

Now comes Anna P. Ashburn, executrix of the said W. W. Ashburn, deceased, and shows the Court as follows:

1st. That since the argument had in the above stated matter, and while the case is still pending on appeal, W. W. Ashburn, the appellant, died testate on the 17th day of October, 1906.

2nd. Anna P. Ashburn was nominated in his will as sole executrix of all of his property, consisting of both personalty and realty.

3rd. That on the 3rd day of December, 1906, the will of said W. W. Ashburn was probated in solemn form, in the Court of Ordi-

nary of Colquitt County, Georgia, which is the Court having
527 jurisdiction of such matters, and Anna P. Ashburn was duly appointed and constituted executrix under said will, as is shown by certified copy of letters of executrixship hereto attached.

Wherefore Anna P. Ashburn as executrix prays an order admitting her in her capacity as executrix as appellant in said cause in lieu of said W. W. Ashburn, deceased.

ROBERT L. SHIPP,
Solicitor for Anna P. Ashburn, Executrix.

GEORGIA, *Colquitt County:*

To whom it may concern:

Whereas at the regular term of the Court Ordinary for said state and county, on the third day of December, nineteen hundred and six (1906), the last will and testament of W. W. Ashburn, late of said county, deceased, was duly proved and admitted to record, and it was ordered that letters testamentary issue to Anna P. Ashburn, the executrix named in said will, upon her taking the oath of office.

Now, therefore, the said Anna P. Ashburn, having taken said oath is by these presents authorized and empowered to act as executrix for said will, and to administer all and *the* singular *and* goods and chattels, *writes* and credits, lands and tenements of said deceased according to said will and the laws of said state.

Given under my hand and official seal, this 3rd day of December, nineteen hundred and six (1906).

[Seal attached] T. H. PARKER,
Ordinary and Ex-Officio Clerk of Court of Ordinary.

GEORGIA, *Colquitt County:*

I, T. H. Parker, do hereby certify that I am Ordinary within and for said county, and that I have no clerk.

I further certify that the above and foregoing is a true and correct copy of the let-ers testamentary issued to Anna P. Ashburn, as executrix of the last will of W. W. Ashburn.

[SEAL.] T. H. PARKER,
Ordinary Colquitt County.

(Indorsed:) No. 1506. U. S. Circuit Court of Appeals, Fifth Circuit. Ashburn, Appellant, *vs.* Graves, *et al.,* Appellees.
528 Motion to make Anna P. Ashburn, executrix, party appellant in lieu of W. W. Ashburn, deceased. U. S. Circuit Court of Appeals. Filed Dec. 6, 1906. Charles H. Lednum, Clerk. Shipp & Kline, Attorneys at Law, Moultrie, Ga.

And thereafter on December 6, 1906, in the record and proceedings of said Circuit Court of Appeals is an order making Anna P. Ashburn, executrix, party, in said cause in the words and figures following, to-wit:

No. 1506.

W. W. ASHBURN
vs.
JENNIE L. GRAVES ET AL.

On suggestion to the Court that W. W. Ashburn, appellant herein, is now deceased, upon motion therefor duly made and filed herein, it is ordered that Anna P. Ashburn, as executrix of the estate of W. W. Ashburn, deceased, be, and she is hereby, permitted to make herself appellant herein in the place of the said W. W. Ashburn, deceased.

And thereafter on January 22, 1907, an opinion of said Circuit Court of Appeals was filed in said Causes in words and figures following, to-wit:

529 *Opinion of the Court.*

Filed 22 day of January, 1907.
CHARLES H. LEDNUM,
Clerk of the U. S. Circuit Court of Appeals.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 1506.

W. W. ASHBURN, Appellant,
vs.
JENNIE L. GRAVES ET AL., Appellees,

and

No. 1525.

JENNIE L. GRAVES ET AL., Cross-Appellants,
vs.
H. T. CRAWFORD ET AL., Cross-Appellees.

Appeal and Cross-Appeal from the Circuit Court of the United States for the Southern District of Georgia.

Robt. L. Shipp, for appellant.
Marion Erwin, for appellees.
Marion Erwin and M. P. Callaway, for cross-appellants.
Robt. L. Shipp and Saml. B. Adams for cross-appellees.

Before Pardee and Shelby, Circuit Judges, and Meek, District Judge.

This is a suit in equity by Jennie L. Graves, Minnie C. Graves, and Ida Graves, citizens of New York, against H. T. Crawford, William McMullin, John McMullin, W. W. Ashburn and John W. Hightower, citizens of Georgia.

The property involved in the suit is real estate situated in the 8th district of Colquitt County, Georgia, described as lots numbered 353, 354, 383 and 384, containing 1960 acres, worth $10,000.

The bill shows that Eli Graves acquired the title from the State of Georgia; that he conveyed it to Joel S. Graves March 22, 1848; that on June 8, 1855, Joel S. Graves conveyed the lands to Cyrus S. Graves, who died in 1863; and that the title passed by operation of law to the complainants, two of whom are the children, and one the widow, of Cyrus S. Graves. The complainants claim to have inherited title to the lands from Cyrus S. Graves. The lands
530 are alleged to be valuable on account of the heavy growth of pine timber thereon.

The following is a condensed statement of the material averments of the bill on which the complainants based their right to relief. Complainants, in the year 1889, consulted A. T. McIntyre, Sr., of the firm of McIntyre & McIntyre, attorneys at law, as to the protection of the lands from trespassers. McIntyre, Sr., advised complainants to obtain the services of William McMullin to protect the lands from trespassers. Complainants visited and examined the lands and engaged William McMullin "to look after the lands." He promised to perform this service without charge on account of the past kindness of one of the complainants to his brother. The complainant Jennie L. Graves, about April 2, 1899, conveyed all of her interest in the lands to the other two complainants. McIntyre, Sr., was retained to look after complainants' interest in the land, and to pay the taxes, and funds were left with him for that purpose. Complainants left with McIntyre, Sr., such "title deeds as they had." Complainants then returned to New York. McIntyre, Sr., prosecuted a suit against one Norman, who was a trespasser on part of the lands, and was paid a fee for his services. The complainants paid the taxes on the lands to the date of the filing of the bill.

The only part of the bill which connects W. W. Ashburn with the case is Section 16, which is as follows:

"Your orators further aver and charge that while the said A. T. McIntyre so represented your orators as attorney, as aforesaid, and was in possession of your orator's title deeds, as aforesaid, to-wit, on November 5th, 1890, the said McIntyre, as a member of the firm of McIntyre & Watson, undertook to convey by deed, and in behalf of said firm of McIntyre & Watson, to said W. W. Ashburn, the title to the north half of the lot No. 353, which deed is recorded on the records of the clerk of the Superior Court of Colquitt County, Ga., February 1, 1890. The said W. W. Ashburn accepted said conveyance with full notice that the title to said lot of land was in your orators, and that the said McIntyre & Watson had no title thereto. And your orators further aver and charge that the said deed constitutes a cloud upon the title of your orators' said lands. And the said north half of said lot being still covered with a heavy growth of marketable pine timber, and being chiefly valuable by reason of the opportunity to sell said timber, the said cloud upon your orators' title prevents your orators from selling the said timber, to the great wrong and injury and loss of your orators; and your orators
531 further aver and charge on information that the said W. W. Ashburn has leased the timber privileges on the said north

half of said lot No. 353 to the said John H. Hightower, who is about to proceed, under the said W. W. Ashburn, to cut and convey away said timber, to the great wrong and injury of your orators, and through other persons acting under him has boxed the trees and taken the turpentine from other portions of said lot No. 353."

It is alleged that by fraud or mistake lot No. 383 was sold at a receiver's sale; that McIntyre, Jr., of the firm of McIntyre & McIntyre, who at the time were complainants' attorneys in possession of their deeds, bought the lot for $5, saying that he bought for orators, but took deed in his own name. The lot was worth $2500. The facts were concealed from the complainants. Afterwards, McIntyre, Jr., died and Hays was appointed his administrator. By a fraudulent agreement—Hayes being ignorant of the fraud—Hayes, as administrator, conveyed lot No. 383 to John McMullin, son of William McMullin, and John McMullin conveyed it to H. T. Crawford. The order of sale was obtained by McIntyre, Sr., who wrote the conveyances. The bill then makes averments charging H. T. Crawford with trespassing on lot No. 383 in December, 1898; that he commenced "to box trees on said lot for turpentine purposes." It also charged that Crawford entered upon the "south halves of lots 353 and 354, and cut timber on parts of the same, and used the same for turpentine purposes, and is continuing his trespasses thereon, and, unless restrained by the orders and decrees of this Court, will destroy the entire timber and turpentine values of said lots."

As to the injury the complainants will suffer, the following averment is made:

"Your orators further aver and charge on information that said trespassers, knowing the fact that your orators were defenseless females, residing in a distant state, have taken advantage of your orators' absence and have advanced from one step to another in the wrongs and injuries upon your orators in and about said lands, and that they have combined and confederated in said wrongs with the attorneys and agents aforesaid left by your orators in that locality to look after your orators' interests there, and that unless the trespassers aforesaid are restrained and enjoined by the orders and decrees of this Court, your orators will suffer irreparable loss and injury."

532 The bill contains elaborate allegations as to William McMullin's bringing a suit against complainants in a Court of law by attachment and obtaining judgment for a large sum, and making levy and threatening a sale of complainants' property; but as the Court below cancelled this judgment, and McMullin has not appealed, there is no question before this Court as to that part of the bill.

The bill concludes with a prayer for an injunction against all the defendants to restrain them from boxing trees on any of the lands; that the fraudulent deeds and leases under which defendants hold be cancelled, and for an accounting and decrees against defendants for the value of turpentine and timber used by them respectively.

The defendants filed demurrers to the bill. The Court overruled

the demurrers. The defendants then filed answers. Evidence was taken, and the case was tried on its merits.

The Court entered a final decree substantially as follows: That the bill as to H. T. Crawford be dismissed for want of equitable cognizance as shown by the proof, without prejudice to the right of complainant to sue at law—the title to lot 383 and south half of lot 353 not being passed on; that complainants have a perfect legal right to lots 354, 384 and north half of 353, and are entitled to the relief prayed against all the other defendants; that the fraudulent judgment obtained by William McMullin be cancelled; that a perpetual injunction be granted as to W. W. Ashburn and John H. Hightower, and the Union Lumber Company, and all persons claiming under them, as to lots 354, 384 and north half of 353; that judgment is given complainants against W. W. Ashburn for $379.75 for the turpentine taken from the north half of lot 353 prior to the filing of the bill; that judgment is given complainants against W. W. Ashburn, and his lessees, Hightower and Union Lumber Company, for $1,076, for the value of timber cut from the north half of lot 353 pending the suit (and in violation of the injunction of the Court); that the lease made by Ashburn to Hightower and the Union Lumber Company be cancelled.

Ashburn appealed from this decree, and assigns that the Court erred in overruling his demurrer to the bill, and in decreeing against him on the merits. None of the other defendants appeal. The complainants have sued out a cross-appeal. They assign that the Court erred in dismissing the bill as to H. T. Crawford, and in failing to grant relief against Crawford.

533 SHELBY, Circuit Judge, having made the foregoing statement of the case, delivered the opinion of the Court:

Under rule 25 of this Court the appeal and cross-appeal have been argued together as one case. Bucki *vs.* Atlantic Lumber Company, 93 Fed. 765.

The appellant, Ashburn, assigns that the Court below erred in overruling his demurrer. One of the grounds of demurrer was that there was no equity in the bill; that the complainants' remedy at law was ample and complete.

The only mention of Ashburn in the bill is in the 16th paragraph, which we have copied in full in the statement of the case. The averments in brief are that McIntyre, one of the complainants' attorneys, conveyed to Ashburn the north half of lot No. 353, which was owned in fee by the complainants, and that Ashburn accepted the deed and had it recorded; that Ashburn had leased to John W. Hightower the timber privileges on the north half of the lot; and that the lessee, under the lessor, is about to proceed to cut and convey away said timber, and through other persons has boxed the trees, and taken turpentine from trees on other portions of the lot. The contention is that these averments give the Court jurisdiction in equity to remove a cloud on the complainants' title by cancelling the deed that McIntyre made to Ashburn; and that these averments confer jurisdiction to enjoin the threatened trespass.

The jurisdiction of Courts of Equity to remove clouds from title is exercised for the reason that the deed, or other instrument constituting the cloud, may be used to injuriously or vexatiously embarrass the complainant's title. There are well established limitations upon the exercise of the jurisdiction. A plaintiff having the legal title and not in possession will ordinarily be left to his action of ejectment. This is the familiar doctrine of the Federal Courts. United States *vs.* Wilson, 118 U. S. 86, 89; McGuire *vs.* Pensacola City Co., 105 Fed. 677. When a local statute gives the remedy by bill in equity to remove a cloud on the legal title, without requiring the complainant to first obtain possession, the remedy may be administered in appropriate cases by the Federal Courts. But we know of no such local statute affecting this case. What does the bill show as to the possession of lot No. 353? The appellee quotes authority to the effect that if complainants allege that they are "seized in fee simple," that that is a sufficient allegation of possession. Gage *vs.* Kaufman, 133 U. S. 471. That is true, but we find no
534 such allegation in the bill. The extent of the averment is that the complainants inherited the property from Cyrus S. Graves. So far from alleging possession by the complainants, the bill tends to show that Ashburn, by his lessee, is in possession. It is alleged that Ashburn accepted a deed to the property from McIntyre; that he "has leased the timber privileges" on it to Hightower, who is about to proceed to cut the timber and to carry it away, and through other persons acting under him has boxed the trees and has taken the turpentine from trees on other portions of the lot. These averments certainly do not show that the complainants are in possession of the property, and we think that they are intended to show that Ashburn and his lessee are in the wrongful possession of it. For that reason the bill cannot be maintained as one to remove cloud from title.

If this difficulty were out of the way, do the averments of the bill show such apparent title in Ashburn as to constitute a cloud on complainants' title? The conveyance was made to Ashburn by McIntyre and one Watson. There are no allegations to show that either one of them had any apparent title to convey. They are strangers to the title set up by the complainants. If the complainants were in possession of the lot, and Ashburn sued for it, this deed to him, on the averments of the bill, would not enable him to recover. It would not make a *prima facie* case for him. No facts are alleged that, taken with the deed, would affect the title of the complainants, or interfere with their possession, if they were in possession. Ashburn's title, as shown by the bill, would fall of its own weight, and the complainants would never be troubled to offer any evidence. Such a deed, under the facts averred in the bill, is not a cloud on title. Thompson *vs.* Etowah Iron Co., 91 Ga. 538; Pixly *vs.* Huggins, 15 Cal. 127; Rea *vs.* Longstreet, 54 Ala. 291. It is true that Mr. Pomeroy, while admitting that the weight of authority sustained it, objected to this doctrine, and expressed the opinion that equity should go so far as to cancel a deed void on its face; 4 Pomeroy's Eq. Jur. (3 Ed.), Sec. 1399; but the Supreme Court

endorses the view that a void deed creates no such cloud as confers equity jurisdiction. Hannewinkle *vs.* Georgetown, 82 U. S. 547; Rich *vs.* Braxton, 158 U. S. 375.

The only other alleged ground of equity jurisdiction in the case as against Ashburn is to enjoin him from cutting the timber on the land. The bill shows that the trees are not shade trees in a yard, or on a lawn, or trees of any special value to ornament grounds. They are merely forest trees, the value of which may be
535 easily estimated. There is no averment in the bill that Ashburn is insolvent. There is nothing in the bill to show that the remedy at law is not ample and complete. The bill, therefore, contains no equity as one to enjoin the cutting of timber. West *vs.* Walker, 3 N. J. Eq. 279, and notes; Cowles *vs.* Shaw, 2 Iowa 496; Paddock *vs.* Davenport, 12 S. E. 464; Jerome *vs.* Ross, 7 Johns. Ch. 314; 1 High on Injunctions (4 Ed.), Secs. 676, 699.

In reference to trespasses by Crawford, it is alleged that unless said trespasses "are restrained and enjoined by the orders and decrees of this Court, your orators will suffer irreparable loss and injury." If this language be construed as applicable to Ashburn, it is immaterial. It is the mere conclusion or opinion of the pleader. Such facts must be stated as show the injury to be irreparable. This averment is not sufficient. Cruickshank *vs.* Bidwell, 176 U. S. 73 81.

The bill showed no grounds of equitable jurisdiction as a suit against Ashburn, and his demurrer should have been sustained, and the bill dismissed as to him without prejudice to the rights of the complainants to sue at law if they were so advised.

We are of opinion that the learned Circuit Court decided correctly in dismissing the bill as to Crawford, and that the cross-appellants are entitled to no relief by their appeal.

On the appeal of Ashburn, the decree against him is reversed, and the cause remanded, with instructions to sustain his demurrer and to dismiss the bill as to him.

The costs of the appeal will be taxed against the appellees and the costs of the cross-appeal against the cross-appellants.

And thereafter, on January 22, 1907, in the record and proceedings of said Circuit Court of Appeals is a final decree in said cause in the words and figures following, to-wit:

536 *Final Decree.*

No. 1506.

W. W. ASHBURN, Appellant,
vs.
JENNIE L. GRAVES ET AL., Appellees,

and

No. 1525.

JENNIE L. GRAVES ET AL., Cross-Appellants,
vs.
W. W. ASHBURN ET AL., Cross-Appellees.

JAN. 22, 1907.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Georgia, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by the Court that the decree of the said Circuit Court in this cause, on the appeal of W. W. Ashburn and in so far as it relates to him, be, and the same is hereby reversed, and this cause remanded to said Circuit Court, with instructions to sustain his demurrer and to dismiss the bill as to him.

It is further ordered, adjudged and decreed by this Court that the cross-appellants, Jennie L. Graves, Minnie C. Graves and Ida J. Graves, are entitled to no relief on their appeal in this cause.

It is further ordered, adjudged and decreed by this Court that the said cross-appellants, Jennie L. Graves, Minnie C. Graves and Ida J. Graves, and the surety on their appeal bond herein, George L. Warren, be condemned to pay the costs of the appeal and cross-appeal in this case in this Court, for which execution may be issued out of said Circuit Court.

And thereafter, on February 11, 1907, a petition for rehearing was filed in said cause in said Circuit Court of Appeals in words and figures following, to-wit:

537 *Petition for Rehearing.*

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 1506.

W. W. ASHBURN, Appellant,
vs.
JENNIE L. GRAVES ET AL., Appellees,

No. 1525.

JENNIE L. GRAVES ET AL., Cross-Appellants,
vs.
H. T. CRAWFORD ET AL., Cross-Appellees.

Petition for Rehearing, Marion Erwin, Counsel for Petitioner.

Filed Feb. 11, 1907.

CHARLES H. LEDNUM,
Clerk U. S. Circuit Court of Appeals.

In the United States Circuit Court of Appeals, Fifth Circuit.

No. 1506.

W. W. ASHBURN, Appellant,
vs.
JENNIE L. GRAVES ET AL., Appellees,

No. 1525.

JENNIE L. GRAVES ET AL., Cross-Appellants,
vs.
H. T. CRAWFORD ET AL., Cross-Appellees.

Petition for Rehearing.

And now, within twenty days after judgment rendered in the above stated appeal and cross-appeal, comes Jennie L. Graves, Ida J. Graves and Minnie C. Graves, appellees in the above stated appeal cause No. 1506, and cross-appellants in the above stated cross-appeal cause No. 1525, and respectfully petitions this Honorable Court for a rehearing of said causes for the following reasons:

(1) Because it appears from the opinion of the said Circuit Court of Appeals, filed on January 22, 1907, that the judgment of the Court, reversing the decree of the lower Court in No. 1506, and sustaining the decree of the lower Court in No. 1525, turned en-
538 tirely on the proposition raised by the demurrers of the defendants to the bill in the lower Court, of want of equitable

cognizance, and that the said Circuit Court of Appeals based its judgment principally upon the following statement:

"A plaintiff having the legal title and not in possession will ordinarily be left to his action of ejectment. This is the familiar doctrine of the Federal Courts. United States *vs.* Wilson, 118 U. S. 89; McGuire *vs.* Pensacola City Co., 105 Fed 677.

When a local statute gives the remedy by bill in equity to remove a cloud on the legal title, without requiring the complainant to first obtain possession, the remedy may be administered in the appropriate cases by the Federal Courts. But we know of no such local statute affecting this case."

Whereas, the statutes of Georgia and decisions of the Supreme Court of Georgia:

(*a*) Do not require that the possession of the premises in controversy, shall be in a complainant having a fee perfect title, as essential to maintaining a bill to remove cloud on title or to restrain continuing trespasses destructive to the timber on lands.

Code of Georgia (1905), Sec. 4893. Section 4893 brought forward from Code of 1882.
Griffin *vs.* Sketo, 30 Ga. 300.
Camp *vs.* Dickson, 112 Ga. 878.

(*b*) Expressly provide that in a bill to restrain continuing trespasses by boxing or cutting trees on timber lands, that insolvency of defendant or averment of irreparable injury need not be averred or proved.

Act of Gen. Assembly of Ga., of Oct. 13, 1885, carried into Code of 1905, Sec. 4927.
Camp *vs.* Dickson, *supra*.

(2) Because the Court placed its decision reversing the decree of the Court below as to Ashburn upon the following statement in its opinion:

"These averments certainly do not show that the complainants are in possession of the property, and we think that they are intended to show that Ashburn and his lessee are in the wrongful possession of it. For that reason the bill cannot be maintained as one to remove cloud from title."

539 Whereas, averment or proof of possession in complainant in the case stated in the bill is not necessary under the Georgia laws and decisions of the State Supreme Court thereon, and is, therefore, not necessary to maintain the Federal Court jurisdiction.

Lamb *vs.* Farrell, 21 F. R. 8.
Gormley *vs.* Clark, 134 U. S. 348.

(3) Because the Court placed its decision reversing the decree in the Court below as to Ashburn upon the following statement in its opinion:

"The bill shows that the trees are not shade trees in a yard, or on a lawn, or trees of any special value to ornament ground. They are merely forest trees, the value of which may be easily estimated. There is no averment in the bill that Ashburn is insolvent. There

is nothing in the bill to show that the remedy at law is not ample and complete. The bill therefore contains no equity as one to enjoin the cutting of the timber."

(*a*) Whereas, under the statutes of Georgia and the decisions of the Supreme Court of the state thereon:

It was not necessary to aver or prove Ashburn's insolvency, nor to aver or prove that the complainant would suffer irreparable injury, in a bill to restrain continuing or threatened trespasses by boxing timber for turpentine or cutting timber on lands, but the right to maintain such bill without such averment or proof is given by the said local laws.

(*b*) And whereas, there is an averment in the bill that said land was then covered by a heavy growth of marketable pine timber, and being chiefly valuable by reason of the opportunity to sell said timber. But there was no averment that the value of the trees could be easily estimated. On the contrary, the averment is:

"And that unless the trespasses of aforesaid are restrained and enjoined by the orders and decrees of this Court your orators will suffer irreparable loss and injury."

And because the Georgia statute and decisions had made the boxing or cutting of such growing timber trees by trespass on lands of the true owner irreparable injury in the equity sense.

540 (*c*) And whereas, under the allegations of the bill the defendant Ashburn had been boxing the trees on the lot in question and had made a lease as to the timber, and was then and there proceeding and threatening to proceed to cut and carry away the timber, and that these averments were sufficient to show that a suit in ejectment would give no relief because that would not prevent the timber from being cut. It was sufficient averment to show that an action on the case for trespass would not give adequate relief, because suit after suit would have to be brought as said continuing trespasses advanced in order to recover damages, thus entailing a multiplicity of suits.

(4) Because the Court placed its decision reversing the decree in the Court below as to Ashburn upon the following statement in its opinion:

"If this difficulty were out of the way, do the averments of the bill show such apparent title in Ashburn as to constitute a cloud on complainants' title? The conveyance was to Ashburn by McIntyre and one Watson. There are no allegations to show that either one of them had apparent title to convey. They are strangers to the title set up by the complainants. If the complainants were in possession of the lot, and Ashburn sued for it, this deed to him, on the averments of the bill would not enable him to recover. It would not make a *prima facie* case for him. No facts are alleged that, taken with the deed, would affect the title of the complainants, or interfere with their possession, if they were in possession. Ashburn's title, as shown by the bill, would fall of its own weight and the complainants would never be troubled to offer evidence. Such a deed, under the facts averred in the bill, is not a cloud on title."

(*a*) Whereas, there was no averment in the bill that the deed

of 1890, from McIntyre & Watson to Ashburn was void on its face or any allegations which would indicate that.

The averment was that Ashburn had caused the deed to be recorded by the clerk of the Superior Court of Colquitt County, which would indicate that the deed was valid on its face.

The averment was that:

"The said W. W. Ashburn, accepted said conveyance with full notice that the title to said lot of land was in your orators,
541 and that the said McIntyre & Watson had no title thereto."

This being an averment of fact requiring proof extrinsic of the deed, in order to show that the title would be wholly void.

The law of Georgia of prescription gives the grantee complete title where open adverse acts of possession are done under color of such deed for seven years, even though the grantor had no title, unless it can be shown by evidence that the deed was knowingly received by the grantee in fraud. (See authorities on principal brief.) And this would, under the allegations of the bill, require proof by evidence extrinsic of the deed, in order to destroy the effect of the deed as color of title.

(*b*) And whereas, the following specific acts averred to in the bill, and referred to in the statement of the case by the Court, show that the deed attacked was being used by Ashburn to interfere with complainant's possession and which acts would affect complainant's title unless restrained, viz:

That Ashburn had caused the deed to him to be recorded. This being an act tending to give the deed color for prescription where a small part of the lot is taken under possession. (Tritt *vs.* Roberts, 64 Ga., 157-158.)

That Ashburn had leased the timber privileges on the said north half of said lot No. 353 to the said John H. Hightower, who was about to proceed under the said W. W. Ashburn to cut and convey away said timber.

That Ashburn through other persons acting under him has boxed the trees and taken the turpentine from other portions of said lot 353.

These all being "particular circumstances" stated in reference to the use to which the deed was being put "showing the necessity" (to proceed) "by equity either for preventing a multiplicity of suits" (through successive suits for trespass), "or other vexation" (such as interfering with the possession, and destroying the trees which are alleged to be the principal value of the land). (Riche. *vs.* Braxton, 158 U. S. 405-6.)

(5) Because the Court placed its decision sustaining the decree of the Court below, dismissing complainants' bill as to H. T. Crawford, for want of equitable cognizance, upon the same erroneous conclusions of law hereinbefore referred to, as are stated in
542 its said opinion to have been applied to the jurisdictional averments as to W. W. Ashburn, viz. (*a*) that there was no local law in Georgia, dispensing with allegation and proof of possession in complainants in suits for injunction to restrain trespass by boxing and cutting trees on timber lands, or to remove cloud on title, (*b*) and dispensing with allegation and proof of insolvency

of defendant or of irreparable injury in such cases for enjoining such boxing and cutting of timber on timber lands.

(6) Because the grounds upon which the Court has put its judgment, has not only decided a most important legal question against these petitioners, affecting their rights, but if allowed to remain uncorrected will establish a rule of procedure in Federal Courts in this circuit and in Georgia, which will deprive a large class of non-resident citizens owners of timber lands in Georgia, of the right to have the timber on such lands protected from trespass, by injunction in the Federal Courts, where such non-residents have perfect title, and the facts are such that the State Courts give relief to the citizens of Georgia under similar facts.

And your petitioners pray, therefore, that an order may be made for a rehearing of the argument in this case on a day to be appointed by this Court at the present term.

JENNIE L. GRAVES,
IDA J. GRAVES,
MINNIE C. GRAVES,
By MARION ERWIN,
Their Counsel.

I, Marion Erwin, do hereby certify that in my opinion the foregoing petition for rehearing is well founded in law, and properly and fairly states the matters therein referred to, and is not filed for purposes of delay.

February 6, 1907.

MARION ERWIN,
Counsel as Above.

543 And thereafter, on February 26, 1907, in the record and proceeding of said Circuit Court of Appeals is an order denying petition for rehearing in the words and figures following, to-wit:

Order Denying Petition for Rehearing.

Filed Feb. 26, 1907.

CHARLES H. LEDNUM,
Clerk U. S. Circuit Court of Appeals.

In the United States Circuit Court of Appeals, Fifth Circuit.

1506.

W. W. ASHBURN, Appellant,
vs.
JENNIE L. GRAVES ET AL., Appellees,

and

1525.

JENNIE L. GRAVES ET AL., Cross-Appellants,
vs.
H. T. CRAWFORD ET AL., Cross-Appellees.

Appeal and Cross-Appeal from the Circuit Court of the United States for the Southern District of Georgia.

Before Pardee, McCormick and Shelby, Circuit Judges.

By the COURT:

The application for a rehearing is denied. See Southern Pine Company *vs.* Hall, 105 Fed. 84, and cases there cited.

544 I, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the 19 pages next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the Court (except the transcripts of the records from the Circuit Court of the United States for the Southern District of Georgia) in certain causes in said Court, numbered 1506, wherein W. W. Ashburn is appellant, and Jennie L. Graves, *et al.*, are appellees, and 1525, wherein Jennie L. Graves, *et al.*, are appellants and W. W. Ashburn, *et al.*, are appellees, as full, true and complete as the originals of the same now remain on file and of record in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 7th day of December, A. D. 1907.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

545 United States Circuit Court of Appeals, Fifth Circuit.

JENNIE L. GRAVES ET AL., Petitioners,
vs.
ANNA P. ASHBURN, Executrix, etc., ET AL., Respondents.

On Writ of Certiorari from the Supreme Court of the United States, to the United States Circuit Court of Appeals, for the Fifth Circuit.

Stipulation as to Return of Writ of Certiorari.

It is stipulated by and between the parties hereto, through their respective counsel of record, that the transcript of the record in the consolidated causes entitled in the Circuit Court of Appeals as "W. W. Ashburn, Appellant, *vs.* Jennie L. Graves, *et al.*, Appellees, No. 1506, and Jennie L. Graves, *et al.*, cross-appellants *vs.* H. T. Crawford *et al.*, cross-appellees, No. 1525" as certified by the Clerk of the said Circuit Court of Appeals, which was used on the application for said writ of Certiorari, and which is now on file in the office of the Clerk of the Supreme Court of the United States, in this cause, which is entitled in said Supreme Court "Jennie L. Graves *et al.*, Petitioners, *vs.* Anna P. Ashburn, *et al.*, Respondents, Number 564 of the October Term 1907," shall be taken as a return to the said writ of certiorari granted by said Supreme Court of the United States on the 20th day of January, 1908, and issued under date of January 25, 1908; And that the Clerk of this said Circuit Court of Appeals shall send up to the said Supreme Court a
546 certified copy of this Stipulation as his return to the said Writ of Certiorari, and shall also as a part of his said return, send up to the Supreme Court for its inspection, the original deeds and other original documentary evidence in said causes which were sent up from the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia, under its order, to the said Circuit Court of Appeals for its inspection, in accordance with the provisions of rule 8 of the said Supreme Court, as a part of the record in said cause in the Supreme Court.

Feb. 4, 1908.

MARION ERWIN,
Solicitor for Jennie L. Graves, Ida J. Graves, and Winnie C. Graves.

ROBT. L. SHIPP,
Solicitor for Anna P. Ashburn, Executrix of Last Will and Testament of W. W. Ashburn, Deceased.

Endorsed: No. 1506. 1525. Stipulation. Filed 2 day of Mch., 1908, Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

A True Copy:
Attest with seal this the 2nd day of March, A. D. 1908.
[Seal United States Circuit Court of Appeals, Fifth Circuit.]
CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

547 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Fifth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Anna P. Ashburn, as Executrix of W. W. Ashburn, deceased, appellant, and Jennie L. Graves, Ida J. Graves, and Minnie C. Graves, appellees, and Jennie L. Graves, Ida J. Graves, and Minnie C. Graves, appellants, and W. W. Ashburn, H. T. Crawford, and John McMullen, appellees, which suit was removed into the said Circuit Court of Appeals by virtue of appeals from the Circuit Court of the United States for the Southern District of Georgia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit
548 Court of Appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 25th day of January, in the year of our Lord one thousand nine hundred and eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

549 [Endorsed:] File No. 20,967. Supreme Court of the United States. No. 564, October Term, 1907. Jennie L. Graves *et al. vs.* Anna P. Ashburn, Executrix, &c., *et al.* Writ of Certiorari. Filed 2 day of Mch, 1908. Charles H. Lednum, Clerk of the United States Circuit Court of Appeals.

United States Circuit Court of Appeals for the Fifth Circuit.

I, Charles H. Lednum, Clerk of said court, do hereby certify that I received the within writ on the 2nd day of March, A. D. 1908, and, whereas, the attorneys for the parties therein named have, by stipulation in writing, filed in my office on this day, agreed that the transcript of the record in the consolidated causes entitled in the Circuit Court of Appeals as W. W. Ashburn, appellant, *vs.* Jennie L. Graves *et al.*, appellees, No. 1506, and Jennie L. Graves *et al.*, cross-appellants, *vs.* H. T. Crawford *et al.*, cross-appellees, No. 1525, which was filed in the Supreme Court of the United States by Jennie L. Graves *et al.*, petitioners, and which was used by them on the application for a writ of certiorari, shall be taken as a return to said writ of certiorari issued out of the Supreme Court of the United States on the 25th day of January, A. D. 1908,

Now, therefore, in compliance with said writ, and by direction of the judges of this court, I have made and attached hereto a certified copy of said stipulation as a return to the within writ.

Witness my official signature and the seal of said court this the 2nd day of March, A. D. 1908.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

CHARLES H. LEDNUM,
Clerk of the United States Circuit Court of Appeals.

550 [Endorsed:] File No. 20,967. Supreme Court U. S., October Term, 1907. Term No. 564. Jennie L. Graves *et al.*, Petitioners, *vs.* Anna P. Ashburn, Executrix, &c., *et al.* Writ of Certiorari and return. Filed March 7th, 1908.

In the Supreme Court of the United States.

JENNIE L. GRAVES, *et al.*,

Petitioners,

against

H. T. CRAWFORD, *et al.*,

Respondents.

Petition and Brief on Application for Issuance of Writ of Certiorari to United States Circuit Court of Appeals for the Fifth Circuit.

MARION ERWIN,
Solicitor for Petitioner.

WM J. WALLACE,
Of Counsel.

S. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.

In the Supreme Court of the United States.

JENNIE L. GRAVES, *et al.*,
Petitioners,

against

H. T. CRAWFORD, *et al.*,
Respondents.

Petition for a Writ of Certiorari.

Petition for a Writ of Certiorari.

Jennie L. Graves, Ida J. Graves and Minnie C. Graves, citizens and residents of the State of New York, respectfully present to this court their petition for a writ of certiorari to be addressed to the Circuit Court of Appeals of the United States for the Fifth Circuit, commanding said court and the clerk thereof to certify to this court the record and proceedings in the appeal cause of W. W. Ashburn, appellant, against your petitioners, Jennie L. Graves *et al.*, appellees, No. 1506, and the cross-appeal cause of your petitioners, Jennie L. Graves *et al.*, cross-appellants, against H. T. Crawford *et al.*, cross-appellees,, No. 1525, consolidated and lately pending in said Circuit Court of Appeals, and finally disposed of therein by the decree of said Circuit Court of Appeals, rendered on the 22d day of January, 1907, and by the decree of said court rendered on the 26th day of February, 1907, denying a petition for rehearing in said consolidated causes.

Due notice of this application has been given to

the attorneys of record for all parties who appeared in said Circuit Court of Appeals.

Nature of the Case.

This was an equity cause which arose in the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia. The bill was brought by citizens of the State of New York against citizens of Georgia resident in said division and district, in which it was averred and set forth in substance (Record, pp. 3-4) that the petitioners held and owned a perfect legal chain of title from the State of Georgia into themselves to a tract of land constituted of four contiguous lots Numbers 353, 354, 383 and 384, in the Eighth District of Colquitt County, Georgia, forming a square tract containing 1960 acres of what is generally called wild lands, for the most part covered with a heavy growth of pine trees chiefly valuable for turpentine and timber purposes, and the value of which had been recently greatly enhanced, and was increasing by reason of the building of two railroads in the immediate vicinity. That they were the true owners of said lands. It was averred that the property in controversy, much exceeded the sum or value of $2,000, exclusive of interest and costs (Record, p. 5). The bill charged and set forth (Record, 5-10) a fraudulent conspiracy between defendants Crawford and Ashburn and certain persons who were agents of petitioners delegated with the duty of watching over and protecting the lands from trespassers, in pursuance of which conspiracy certain deeds described had been made purporting to convey the title to certain parts of said tract, from persons having no title or fraudulent titles, to the defendants Crawford and Ashburn, who took such conveyances with full

knowledge of the want of title in the grantors and of the existence of petitioners' valid title (Record, 8 and 9). It was charged that under color of said fraudulent conveyances Crawford, about three months prior to the filing of the bill, commenced to box the trees on lot 383 for turpentine purposes, and was then proceeding to dip and carry away the turpentine therefrom (Record, p. 10), and also that he had entered upon the south halves of lots 353 and 384 and had cut the timber on parts of the same, and used the same for turpentine purposes, and was continuing his trespass therein, and unless restrained by the orders and decrees of the court he would destroy the entire timber and turpentine values of said lots (Record, p. 10).

It was charged that under color of said fraudulent conveyances said W. W. Ashburn had leased the timber privileges on the north half of lot 353 to defendant John H. Hightower, who was about to proceed under said Ashburn to cut and convey away the timber thereon, and that Ashburn, through other persons acting under him, had boxed the trees and taken the turpentine from other portions of said lot 353 (Record, p. 8). It was averred that unless the continuing trespasses of Ashburn and Crawford were enjoined that the complainants would suffer irreparable injury (Record, p. 4). It was averred that the aforesaid fraudulent conveyances to Crawford and Ashburn, respectively, under color of which they were committing the trespasses compained of, constituted clouds on complainant's title (Record, pp. 8 and 10).

The prayers (Record, pp. 13-14) were for temporary and final injunction to restrain the trespasses complained of, for cancellation of the said fraudulent conveyances under the color of which the trespasses were being committed, for accounting from Crawford and Ashburn for the value of the tur-

pentine and timber products taken off said lands by them, and for general relief.

There were other defendants, and other charges relating to them, but it is unnecessary to refer to them for the purposes of this petition, because they have been eliminated from the case by reason of failure to appeal or appear on appeal, or who became unnecessary parties to the relief sought.

The Course Taken by the Litigation.

In the Circuit Court demurrers of Crawford and Ashburn to the bill were overruled (Record, p. 75), and the case went to trial on the merits. Ashburn had been enjoined *pedente lite*, but Crawford was not (Record, p. 47). It appeared by the evidence on the merits at the trial that, while the cause was still pending, the defendant Crawford cut off and carried away all the timber from the parts of said tract of land upon which he had entered under color of the deed attacked as fraudulent, leaving only the bare land.

The Circuit Court (Record, p. 110) held that the complainants' legal title (which was the same as to the whole tract), was perfect, but under the proof that all the timber on the parts of the tract claimed by Crawford had been destroyed or taken away by or under him, pending the suit, it in effect held that it had lost jurisdiction to give the relief by injunction against him, and that there was an adequate remedy at law to recover the lands and obtain accounting from him for the timber products taken off by him, and dismissed the bill as to Crawford for want of equitable cognizance without prejudice to complainants' right to proceed at law. It also appeared by the evidence at the trial that while the cause was pending the defendant Ashburn, although under

restraining order, violated the injunction and cut and carried away the timber from the lands in controversy.

The Circuit Court by final decree (Record, p. 110) granted the relief against Ashburn cancelling the said fraudulent deeds to him, as clouds on complainant's title, and enjoined further trespasses, and decreed against him the proven value of the timber and turpentine products taken off by him.

The allegations of complainant's bill as to both Ashburn and Crawford were fully sustained by the proof, but in as much as the cause went off in the Circuit Court of Appeals on the demurrers to the bill for want of equity, and the evidence on the merits was not considered, it is not necessary to refer to the details of the evidence for the purposes of this petition. Indeed Ashburn offered in evidence no deed purporting to put any title in his grantor, and the chain of title offered by Crawford to put title in his grantor was shown by the undisputed evidence to consist of forgeries.

Action in Circuit Court of Appeals.

Ashburn appealed from the final decree against him to the Circuit Court of Appeals for reversal of the decree as to him. Petitioners herein also filed their cross appeal from the said decree of the Circuit Court praying a reversal of the decree which dismissed the cause for want of equitable cognizance as to Crawford and refused to give the relief prayed as to him.

The Circuit Court of Appeals, refused to consider the case on the merits, holding that the demurrers of Ashburn and Crawford to the bill should have been sustained for want of equitable cognizance and the bill be dismissed and so decreed.

A motion for re-hearing was made and denied.

The grounds upon which the Circuit Court of Appeals placed its decision were two, viz.:

(1) That there was no averment in the bill that Ashburn and Crawford were insolvent, and that therefore an action at law afforded a complete remedy, and deprived the Court of equitable cognizance for destruction of the timber on the lands. That such jurisdiction in the Circuit Court only extended to the prevention of the destruction of shade trees. And this, notwithstanding the Georgia statute and decisions called to the attention of the Court, conferred upon the Superior Courts of the State, such jurisdiction without averment or proof of insolvency.

(2) That the averment in the bill that the grantors of the deeds to Ashburn and to Crawford had no valid title and that Ashburn and Crawford took with notice of that fact and of complainants title, notwithstanding that it was charged that Ashburn and Crawford, had entered the lands and were committing continuous trespasses and were taking and carrying away the turpentine and timber under color of the deeds, did not make such deeds clouds upon complainant's title, so as to give the Court equitable cognizance of the suit to have said deed cancelled, and this notwithstanding that under the Georgia statutes and decisions if such continuing acts of trespass were allowed to continue for seven years under color of such deeds, a title by prescription would ripen in the defendants, unless it could be provel by extrinsic evidence (the deeds being regular on their face) that the defendants took the deeds with actual notice of the fraud.

Questions of General Importance Involved.

(*a*) Where a State for the purpose of promoting legitimate developement of the great lumber industry, and securing stability to property rights in timber lands, has enlarged the equitable right to injunction for the benefit of the holders of perfect legal title to such timber lands, by conferring upon the Superior Courts of the state equitable jurisdiction to restrain and enjoin the boxing of trees for turpentine, or cutting of such timber from such lands, without averment or proof of actual possession in plaintiff, or irreparable injury to plaintiff or insolvency of defendant, may this enlargement of the equitable right be exercised by the Circuit Court of the United States in favor of citizens of other states against citizens of Georgia, or are such rights only to be obtained by suit brought in the State Courts?

The effect of the decision of the Circuit Court of Appeals, is to deny this remedy in the United States Courts to non-resident owners of timber lands in Georgia, and incidentally to such owners of timber lands in other states in the Fifth Circuit.

The decision in other Circuits on this question have sustained the jurisdiction of Federal Courts in such cases.

U. S. *v.* Gulard Nat., 79 F. R., 21;
Consolidated M. Co. *v.* Champion M. Co., 63 F. R., 540;
Lamb *v.* Farrell, 21 F. R., 8.

And the principle has been decided by the Supreme Court.

Gormley *v.* Clark, 134 U. S., 348.

(b) Where the averments of the bill charge that the defendants are committing continuing trespasses on land destructive of the timber constituting its chief value, and doing it under color of deeds received from persons having no title but regular on their face and duly recorded, which deeds coupled with such acts on and to the lands, would under the laws of the state, ripen into a perfect title by prescription in seven years, unless plaintiff can show by extrinsic evidence that defendants' title commenced in actual fraud or with notice of actual fraud, may a bill be maintained in the Federal courts under the chancery practice to cancel such deeds as a cloud upon complainant's title, or does the averment that the grantors of defendants had no title or no valid title put the complainants out of Court?

The Circuit Court has adopted the latter view, and established a precedent for the whole circuit, denying to non-resident owners of real estate, an equitable remedy in the courts of the United States, which is fully established by the Supreme Court of the United States, the decisions of which on that point we think have in this case been misinterpreted.

Unless this precedent is reversed, the rule laid down will result in great losses to non-resident property holders in the 5th Circuit, and wherever else the precedent is followed.

Wherefore petitioners pray that their petition for a writ of certiorari be granted.

MARION ERWIN,
Solicitor for Petitioners.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Equitable jurisdiction to restrain destruction of timber lands.

The equitable jurisdiction to enjoin continuing trespasses in the taking of turpentine and timber from what is generally called wild or timber lands, is based upon the inadequacy of a complete remedy at law, in that the injury is irreparable because the measure of damages collectible at law will not afford adequate compensation for the property destroyed, and because it would entail a multiplicity of suits, to recover the damages in continuing trespasses. The inadequacy of the remedies at law to protect property rights in timber lands has been recognized, and the right to relief in equity has been given by statutory enactments enlarging the common law limitations in most of the states which have great timber belts in their borders, and notably by the State of Georgia. The products of the "Georgia pine" forming one of the greatest sources of its wealth.

Act of General Assembly of Georgia, October 13, 1885.

"Be it enacted by General Assembly that, from and after the passage of this Act, in all applications to enjoin the cutting of timber, or boxing the same for turpentine purposes, *it shall not be necessary to aver or prove insolvency, or that the damage will be irreparable;* provided the complainant has perfect title to the land upon which the timber is situated:—"

It will be observed that this part of the Act recognizes and confers a valuable *legal right.*

The Act then makes the following provisos relating to pleadings, and as to practice after filing

the bill, which, of course, would not necessarily control the procedure in chancery in the Federal Courts:

Practice Provisos as to Preliminary Orders.

"And shall attach a copy of the same as an exhibit to the bill; and provided, further, that the chancellor granting said temporary restraining order shall require the complainant to give such bond as in his discretion he may deem proper (said bond to be approved by the clerk of the Superior Court) to answer the damages, if any, which may be sustained by the defendant by reason of the granting of said injunction, which bond shall be held and taken as appeal bonds; and if, on the final hearing of the cause damages are adjudged gainst the complainant, judgment shall be entered on said bond as in appeal cases."

This Act is carried into the Georgia Code of 1895, Section 4927, but amended by requiring only an abstract of complainant's title instead of a copy to be attached. A full abstract of complainant's title appears in the bill itself in the case at bar. Also complainant's original title deeds were filed with the bill and are copied in the record, and the decree of the Circuit Court (Record, p. 110), was that complainants had a perfect legal title.

It will be observed that the practice provisions of the act relate only to what is to be done to obtain *interlocutory* injunction, and does not and cannot affect the jurisdiction on the final decree, for no interlocutory injunction might be asked and if asked may not be given, and consequently no bond given because of interlocutory injunction.

This was a legislative recognition of the necessity to protect the legal owners of the great timber lands of Georgia, against the cutting of timber and cutting of trees for turpentine on timber land,

and a further recognition that irreparable injury was suffered in such cases of trespass even though the trespasser was solvent, and that the common law remedy was inadequate.

This is recognized by the Supreme Court of Georgia:

"Where growing timber constitutes the principal value of the land, the cutting of it by a trespasser constitutes irreparable injury in the equitable sense, and may properly be restrained by injunction."

Camp v. *Dickson*, 112 Ga., 878;
Beach Mod. Eq. Jur., 720.

"Where large numbers of growing trees are felled and carried away, the owners of these trees have no way of ascertaining the quantity of lumber made from the trees, and no accurate way of measuring their value. This could not be done unless all timber trees are worth the same. This can hardly be the same."

Camp v. *Dickson*, 112 Ga., 881.

"When a case of fraud in obtaining and holding the possession of lands is involved, complainant may maintain a bill in equity to set aside the fraud; and also in connection with the suit, obtain injunction to stay a waste in cutting down and selling from the lot the valuable timber thereon."

"And this though the plaintiff be not in possession."

Griffin v. *Sketo*, 30 Ga., 300.

"The *decisions* of the Supreme Court of the state, giving the complainant having the legal title the right to bring such a bill without being in actual possession, will give the Federal Courts, in such matters, the same jurisdiction, just as effectually *as if there was a state statute.*"

Lamb v. *Farrell*, 21 F. R., 8.
Gormley v. *Clark*, 134 U. S., 348.

Different Ruling in Other Circuits.

Where the equitable right to maintain such a bill to restrain trespass destruction of timber lands, irrespective of the question of solvency or insolvency of defendants, is recognized by the highest courts of the state, the Federal Judges in other Circuits have maintained the right of non-residents to the same measure of relief in the United States Courts.

"A bill alleging trespass by defendant on the plaintiff's land, and the cutting and removal of growing trees therefrom, to the injury of the inheritance, and threats by the defendant to continue such trespass; and praying injunction to restrain same; constitutes a cause for equitable relief, and a Court of Equity having acquired jurisdiction under such a bill will decree an account and satisfaction for the injury already done. Such a bill, as praying an injunction and accounting, is not multifarious."

U. S. v. *Gurlard et al.*, 79 F. R., 21.
Consolidated Mining Co. v. *Champion Mining Co.*, 63 F. R., 540.
King v. *Stuart*, 84 F. R., 546.

As stated by Judge Paul in the case last cited, it is seldom possible to prove that any more irreparable injury is committed than the destruction of the timber itself, and it is seldom that it can be proven in advance of judgment that the trespasser on such lot is insolvent.

The Georgia statute as we have seen makes the boxing or cutting of timber trees *per se* irreparable injury.

Jurisdiction to remove cloud on title.

The Georgia statute provided:

"Adverse possession of lands, under writ-

> ten evidence of title, for seven years, shall give a like title by prescription. But if such written title be forged or fraudulent, and notice thereof be brought home to claimant before or at the time of the commencement of his possession no prescription can be based thereon." Code Ga. (1905) Sec. 3589.

It will be observed that if the color of title be a deed regular on its face as in the case at bar, where it is charged that it was duly recorded in the county records, the fact that defendant took the deed with notice of the fact that the grantor had no title, is a fact which must be brought home to the defendant by evidence dehors the deed.

Also where the defendant has entered upon the lands under color of the deed and is exercising such acts of ownership as boxing the trees and cutting the timber, if allowed to continue he is not only destroying the property, but he is using the deed to destroy complainant's title and put one in himself by prescription under color of the deed.

Possession in complainant non-essential in Georgia.

The only essentials to be proven by complainant to maintain a bill for removal of cloud on title, are stated in the code as follows:

> (1) "That he cannot immediately or effectually maintain or protect his right by any other course of proceedings open to him."
>
> (2) "That the instrument sought to be cancelled is such as would operate to throw a cloud or suspicion on this title and might be vexatiously or injuriously used against him."
>
> (3) "That he suffers some present injury by reason of the hostile claim of right, although such a claim be not asserted adversely or grievously, he has reason to apprehend

> that the evidence upon which he relies to impeach or invalidate the same as a claim upon his title, may be lost or impaired by lapse of time." Code Ga. 1895, Section 4893.
>
> Griffin *v.* Sketo, 30 Ga., 300 (*supra*).

These statutes of the state, and decisions of the highest courts of the state were called to the attention of the Circuit Court of Appeals, in the brief of complainant's counsel, and also on petition for rehearing, but were ignored. It would seem that the jurisdiction of the Circuit Court in this case, as well in respect to injunction to restrain continuing trespasses, as to removing cloud on title where such trespasses under color of the fraudulent deeds threaten to create prescription, may be rested upon the principles stated by this court in

> Lawson *v.* Harvey, Supreme Ct., U. S., Oct. 21, 1907.

The said Circuit Court of Appeals, in its opinion, after saying that the bill could not be maintained because the averments were not sufficient to show complainants in possession, said:

> "If this difficulty were out of the way, do the averments of the bill show such apparent title in Ashburn as to constitute a cloud on complainant's title? The conveyance was to Ashburn by McIntyre and one Watson. There are no allegations to show that either one of them had apparent title to convey. They are strangers to the title set up by the complainants. *If the complainants were in possession* of the lot, and Ashburn sued for it, this deed to him, on the averments of the bill would not enable him to recover. It would not make a *prima facie* case for him. No facts are alleged that, taken with the deed, would affect the title of the complainants, or interfere with

their possession, if they were in possession. Ashburn's title, as shown by the bill, would fall of its own weight and the complainants would never be troubled to offer evidence. Such a deed, under the facts averred in the bill, is not a cloud on title."

After quoting authorities the court continues:

"The Supreme Court endorses the view that a void deed creates no such cloud as confers equity jurisdiction. *Hanncwinkle* v. *Georgetown*, 82 U. S., 547; *Rich* v. *Braxton*, 158 U. S., 375."

The Court of Appeals applied the same conclusion to the case of Crawford.

We respectfully submit that the authorities cited and applied by the court to the supposed case of Ashburn's being out of possession, and having done no acts to interfere with the possession of complainants, are not applicable to the allegation of this bill.

It is true that from the nature of the lands, they being covered according to the allegations with a heavy growth of pine timber, the north half of lot 353 was susceptible only to possession in a limited sense.

The legal constructive possession in a case of that sort is in the possessor of the legal title:

Gage v. *Kaufman*, 133 U. S., 471;
Thompson v. *Etowah Iron Co.*, 91 Ga., 542;
Rogers v. Hoskins, 15 Ga., 276.

"Where two persons claim to have actual possession of the same land, he is deemed in possession who has the legal title, and the other is a trespasser."

Code of Ga. (1905) Sec. 3878.

But that does not militate against the fact that there was a certain kind of possession, though a wrongful one, in defendants.

Indeed, the averments of the bill charged, as we have seen, that Ashburn had already boxed the trees on other parts of the lot and taken turpentine therefrom, and Ashburn's lessee was about to cut the timber on the north half; and this court had just held in the preceding paragraph of the opinion:

"These averments certainly do not show that the complainants are in possession of the property, and we think that they are intended to show that Ashburn and his lessee are in wrongful possession of it."

There may be a wrongful transitory possession by a defendant.

Rich v. *Braxton*, 158 U. S., p. 404.

It is respectfully submitted that those averments:

"Are facts alleged that, taken with the deed affect the title of the complainants, and interfere with their possession."

It is respectfully submitted that the authorities cited by the Court of Appeals go no further than to hold that a deed or chain of deeds *void on its face* do not constitute cloud on title until some *act is done* under them, which endangers either the title or possession of the holder of the legal title.

In the case of *Hannewinkle* v. *Georgetown*, 92 U. S., 547, there was no allegation of entry on the land or threatened damage to the property itself, the relief sought was simply to prevent Georgetown from conveying to somebody else its alleged

right under a void tax assessment, alleged to be void on its face.

And the court said, "the sole ground of the present bill is the illegality of the tax."

"There must exist in addition, special circumstances bringing the case under some recognized head of equity jurisdiction such as that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant."

Idem, p. 549.

In the case of *Rich* v. *Braxton*, 158 U. S., 375, the Supreme Court say, p. 405, that whether the tax sale was void on the face or not, if the state law allows it to be attacked, it gives a right on which "the plaintiffs were entitled to invoke the aid of a Court of Equity" under the rule of *Holland* v. *Challen*, 110 U. S., 15.

They point out (pp. 405-6) that the contrary rule laid down by some courts where the invalidity appears on the face of the document, is subject to exception where "particular circumstances are stated showing the necessity by equity, *either for preventing a multiplicity of suits, or other vexation.*"

And although in that case the bill averred the tax sale void, and that no title passed to the grantees, and attacked a succession of deeds based on it as clouds on title, the court said, p. 406:

"It is not clear that their invalidity can be placed beyond question or doubt, without evidence *dehors* those deeds."

Here allegations are made of acts done by the holder of the deed attacked, which not only de-

stroy the principal value of the property itself and prevents the enjoyment of the possession, but is an attack on the title, in that if the acts were allowed to continue and be completed during seven years after the date of the deed, under color of which the acts are done, might, under the Georgia law, ripen into a good prescriptive title.

That this danger was not fancied but real, is shown by the fact that, when the case came to the proof in the court below Ashburn sought to set up *prescriptive* title to the north half of lot 353 based upon alleged acts of ownership for more than seven years under color of the deed from McIntyre & Watson, of 1890. And this was disproved by evidence extrinsic of the deed.

It will be observed that the length of time during which acts of trespass under claims of ownership, have been going on, is a matter of oral proof extrinsic to the deed. The evidence of the limits of the time may in a very short time be lost by the death or inaccessibility of witnesses, and be perverted by others.

If the defendant was entirely out of possession and had not committed, and was not threatening to continue, acts indicative of ownership, then the authorities cited as to a deed void on its face, might apply, if the local law was different, because the bill averred that Ashburn's grantees had no title. But it is the deed, in connection with the acts of interruption of complainants' possession, and tending to establish possession and ownership in the defendants which makes the deed a cloud on complainants' title.

For the purpose of creating prescriptive title it is not necessary that McIntyre and Watson should have had title. But simply that the grantee did not know that fact and took the title without fraud. While it is averred in the bill that Ashburn took with notice of complainants' title,

and with knowledge of the fact that his grantors had none, *that is a fact not apparent on the face of the deed,* and a fact which rests on extrinsic proof, liable to be lost or become inaccessible.

This itself takes this case out of the rule referred to.

It is respectfully submitted that under the peculiar laws in Georgia, relative to seven years possession under color of title, it cannot be questioned that where a party is interfering by continuing trespasses, with complainants' title, and doing it under color of a deed, by acts which would ripen into prescriptive title, unless the deed can be shown by extrinsic evidence, to have been obtained by fraud, the fraud not appearing on the face of the deed, that such deed does throw a cloud upon the complainants' title.

Camp v. *Dickson*, 112 Ga., 879.
King v. *Stuart*, 84 F. R., 546.

As to Lot 383.

What has been said in regard to the allegations giving jurisdiction to file the bill to restrain continuing trespasses on timber lands, for removing cloud on title, in regard to the north half of lot 353, is equally applicable to Crawford's fraudulent deed to lot 383, and his continuing trespasses on that lot.

As to the South Half of Lot 353.

The allegations of the bill as to the south half of lot 353, is that both Crawford and Ashburn had been committing continuous trespasses as to that. Ashburn is averred to have boxed the trees and taken the turpentine therefrom, and Crawford had a turpentine still on it, and the trees had been largely cut under them from it.

Joinder of Parties. Several Trespassers.

They were joint trespassers as to lot 353, and it was proper to join them in one suit. It was for them to set up their separate claims, as they afterwards did, when it came out in proof that Crawford and Ashburn were each claiming under deeds which purported to give each of them an *undivided* half interest in the whole of lot 353.

Greer v. *Mezes*, 24 How., 268.

The four lots, 353, 383, 384 and 354, forming a square tract of nearly four square miles of land, about which suit was brought, were all held under one title by complainants from a common grantee from the state, and are to be treated as one tract of land.

Rich v. *Braxton*, 158 U. S., 384.

Destruction by Defendants of All the Trees Pending Suit.

We respectfully submit that jurisdiction over the bill rested upon the conditions as they existed at the commencement of the suit. That the fact that defendant Crawford, pending the suit, cut all the trees off of lot 383 and that defendant Ashburn cut all off the north half of 353, and that, too, in the face of a restraining order as to 353 cannot, there being proper prayers for accounting, prevents the court from awarding complainants the value of the products so taken.

It was error in the Circuit Court to conclude that because the court had granted no restraining order against Crawford, that he could destroy the jurisdiction acquired at the time of filing the bill, by destroying the trees.

"Having obtained rightful jurisdiction of the parties and the subject matter of the action for one purpose, the court will make its jurisdiction effectual for complete relief. Story's Eq., 64 K."

Ober v. *Gallaher*, 93 U. S., 206.
Gormley v. *Clark*, 134 U. S., 349.

"The jurisdiction in equity attaches unless the legal remedy, both in the respect of the final relief, and the mode of obtaining it, is as efficient as the remedy, which equity could confer under the same circumstances."

"When the charge of fraud involves the consideration of principles applicable to fiduciary and trust relations, equity has jurisdiction over it as fraud has a more extensive signification in equity than it has at law."

Kilburn v. *Sunderland*, 130 U. S., 505.

The Importance of the Question.

The decision of the Circuit Court of Appeals sought to be reviewed is one of the most far reaching in its results on the rights of non-residents ever made.

Georgia is one of the greatest pine timber states in the Union, the timber industry has reached enormous proportions.

It is seldom that the owner of such lands has any greater possession of a timber lot than the constructive possession given by fee simple title.

Georgia has given the owner of the perfect title the right to maintain a bill in such case, though out of possession, and though the trespasser be solvent, and which recognizes such trespasses as irreparable injury, *per se*.

To hold that non-residents cannot maintain such a bill in a Federal Court to restrain the trespasses and cancel the deeds under color of which they are done, is to take away from a large class of non-resident owners of timber lands in Georgia, the power to have their rights preserved in the forum provided for their protection by the Constitution and laws of the United States.

MARION ERWIN,
Solicitor for Petitioners.

WM. J. WALLACE,
of Counsel.

SUPREME COURT, U. S.
FILED.
NOV 4 1909
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1909.

No. 51

JENNIE L. GRAVES, IDA J. GRAVES and MINNIE C. GRAVES, *Petitioners*,

vs.

ANNA P. ASHBURN, Executrix of W. W. ASHBURN, deceased, and H. T. CRAWFORD, *Respondents*.

On Certiorari to United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF FOR PETITIONERS.

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GUNTHORP - WARREN PRINTING CO., CHICAGO

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BRIEF FOR PETITIONERS.

STATEMENT OF THE CASE.

A writ of certiorari was granted and issued from this court on January 25, 1908, to the Circuit Court of the United States for the Fifth Circuit for review of the decree of that court rendered January 22, 1907, which directed the dismissal of the bill in the above stated cause as to the defendants Ashburn and Crawford for want of equitable cognizance.

The cause had gone to trial on the merits in the Circuit Court of the United States for the Eastern

Division of the Southern District of Georgia, and that court had granted in part the relief prayed by the complainants against the defendant W. W. Ashburn, but denied the relief prayed against the defendant H. T. Crawford. There were other defendants not necessary to be named at this place.

Ashburn appealed from the decree against him, and complainants (Graves) took a cross-appeal from the decree of the Circuit Court for its refusal to give the relief prayed against H. T. Crawford and for not giving complete relief against W. W. Ashburn.

The defendant W. W. Ashburn died pending the appeal, and his administratrix Anna P. Ashburn was made a party in his place in the Circuit Court of Appeals. The appeal and cross-appeal were heard together. The opinion of the Circuit Court of Appeals is found at page 411 of the record.

A petition for rehearing was denied, and certiorari was granted on the petition of the Graves heirs to this court.

Although made parties defendant to the cross-appeal no defendants other than W. W. Ashburn and after his death his administrator entered appearance in the Circuit Court of Appeals or in this court.

Nature of the Case.

This was an equity cause which arose in the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia. The bill was brought by the above named Graves heirs, citizens of the State of New York, against citizens of Georgia resident in said division and district, in which it was averred and set forth in substance (Rec., 2-3) that the complainants held and owned a perfect legal chain of title from the State of Georgia into Cyrus S. Graves, deceased, passing under the laws of Georgia by inheritance to the complainants, his wife and daughters, to a tract of land constituted of four contiguous lots Numbers 353, 354, 383 and 384, in the Eighth District of Colquitt County, Georgia, forming a square tract containing 1960 acres of what is generally called wild lands, for the most part covered with a heavy growth of pine trees chiefly valuable for turpentine and timber purposes, and the value of which had been recently greatly enhanced, and was increasing by reason of the building of two railroads in the immediate vicinity. That they were the true owners of said lands. They set out a chain of title from the State of Georgia to Cyrus S. Graves, the husband of Jennie L. Graves, and father of Ida J. Graves and Minnie C. Graves, and it is averred and proved (Rec., 222), that Cyrus S. Graves died intestate in 1862 and that his said wife and daughters were and are his heirs at law. It was averred that the property in controversy, much exceeded the sum or value of $2,000, exclusive of interest and costs (Rec.,

4). That the value of the turpentine and timber on the four lots was $10,000 or other large sum, much exceeding the sum of $2,000, exclusive of interest and costs. (Rec., 4.) The bill charged and set forth (Rec., 4-8) a fraudulent conspiracy between defendants H. T. Crawford and W. W. Ashburn and certain persons, A. T. McIntyre, Sr., A. T. McIntyre, Jr., and William McMullen, who were agents of petitioners delegated with the duty of watching over and protecting the lands from trespassers, in pursuance of which conspiracy certain deeds described had been made purporting to convey the title to certain parts of said tract, from persons having no title or fraudulent titles, to the defendants Crawford and Ashburn, who took such conveyances with full knowledge of the want of title in the grantors and of the existence of petitioners' valid title (Rec., 6 and 8). It was charged that under color of said fraudulent conveyances Crawford, about three months prior to the filing of the bill, commenced to box the trees on lot 383 for turpentine purposes, and was then proceeding to dip and carry away the turpentine therefrom (Rec., 8), and also that he had entered upon the south halves of lots 353 and 354 and had cut the timber on parts of the same, and used the same for turpentine purposes, and was continuing his trespass thereon, and unless restrained by the orders and decrees of the court he would destroy the entire timber and turpentine values of said lots (Rec., 8).

It was charged that under color of said fraudulent conveyances said W. W. Ashburn had leased the timber privileges on the north half of lot 353 to de-

fendant John H. Hightower, who was about to proceed under said Ashburn to cut and convey away the timber thereon, and that Ashburn, through other persons acting under him, had boxed the trees and taken the turpentine from other portions of said lot 353 (Rec., 6). It was averred that unless the continuing trespasses of Ashburn and Crawford were enjoined that the complainants would suffer irreparable injury (Rec., 9). It was averred that the aforesaid fraudulent conveyances to Crawford and Ashburn, respectively, under color of which they were committing the trespasses complained of, constituted clouds on complainant's title (Rec., 6 and 8).

The prayers (Rec., 10-11) were for temporary and final injunction to restrain the trespasses complained of, for cancellation of the said fraudulent conveyances under the color of which the trespasses were being committed, for accounting from Crawford and Ashburn for the value of the turpentine and timber products taken off said lands by them, and for general relief. Answers under oath were waived.

There were other defendants, and other charges relating to them, but it is unnecessary to refer to them for the purposes of this statement, because they have been eliminated from the case by reason of failure to appeal, or to appear on appeal, or who became unnecessary parties to the relief sought, as against the defendants Ashburn and Crawford.

The Course Taken by the Litigation.

In the Circuit Court demurrers of Crawford and Ashburn to the bill were overruled (Rec., 60), and the case went to trial on the merits. Ashburn had been enjoined *pendente lite,* but Crawford was not (Rec., 37). The failure to enjoin Crawford at the hearing on rule *nisi,* was laregly due to what was equivalent to a promise given to the court in his answer (Rec., 29) that he would do nothing pending the suit save take the turpentine from trees already boxed. It appeared, however, by the evidence on the merits at the trial (see post, p. 91), that while the cause was still pending, the defendant Crawford cut off and carried away all the timber from the parts of said tract of land upon which he had entered under color of the deeds attacked as fraudulent, leaving only the land, bared of saw-mill timber. (See post, p. 96.)

The Circuit Court (Rec., 89) held that the complainants' legal title (which was the same chain for the four lots composing the whole tract), was perfect, but under the proof that all the timber on the parts of the tract claimed by Crawford had been destroyed or taken away by or under him, pending the suit, it in effect held that it had lost jurisdiction to give the relief by injunction against him, and that there was an adequate remedy at law to recover the lands and obtain accounting from him for the timber products taken off by him, and dismissed the bill as to Crawford for want of equitable cognizance without prejudice to complainants' right to proceed at law. No written opinion was filed by the Circuit Court.

It also appeared by the evidence at the trial that while the cause was pending the defendant Ashburn, lessee although under restraining order, violated the injunction and cut and carried away the timber from lot 353 of the lands in controversy. (See post, p. 96.)

The Circuit Court by final decree (Rec., 89) granted the relief against Ashburn cancelling the said fraudulent deeds to him, as clouds on complainant's title, and enjoined further trespasses on lots 354, 384 and the north half of 353, and decreed against him the proven value of the turpentine and timber privileges for the timber and turpentine products therefrom taken off by him.

But the Circuit Court gave no decree against Ashburn for the proven value of the turpentine products taken off by him pending the suit from lot 383, acts which he did under Crawford. (Pa. 1k 97)

The allegations of complainant's bill as to both Ashburn and Crawford were fully sustained by the proof, but inasmuch as the cause went off in the Circuit Court of Appeals on the demurrers to the bill for want of equity, and the evidence on the merits was not considered, it is necessary to discuss the bill from the point of the demurrer first.

Indeed, as we will later point out, Ashburn offered in evidence no deed purporting to put any title in his grantor, and the chain of title offered by Crawford to put title in his grantor was shown by the undisputed evidence to consist of forgeries. And neither of them could show seven years' possession under color of title to establish prescriptive title.

The grounds upon which the Circuit Court of Appeals placed its decision were three, viz.:

(1) That the averments of the bill, of the boxing of trees for turpentine and cutting of timber on the lands by defendants, put defendants in possession, and not the plaintiffs, notwithstanding the averments that plaintiffs had perfect title, and that the defendants were trespassers.

(2) That there was no averment in the bill that Ashburn and Crawford were insolvent, and that therefore an action at law afforded a complete remedy, and deprived the Court of equitable cognizance for destruction of the timber on the lands. That such jurisdiction in the Circuit Court only extended to the prevention of the destruction of shade trees. And this, notwithstanding the Georgia statute and decisions called to the attention of the court, conferred upon the Superior Courts of the state, such jurisdiction without averment or proof of insolvency.

(3) That the averment in the bill that the grantors of the deeds to Ashburn and to Crawford had no valid title and that Ashburn and Crawford took with notice of that fact and of complainants title,—notwithstanding that it was charged that Ashburn and Crawford, had entered the lands and were committing continuous trespasses and were taking and carrying away the turpentine and timber under color of the deeds,—did not make such deeds clouds upon complainant's title, so as to give the court equitable cognizance of the suit to have said deeds cancelled,

and this notwithstanding that under the Georgia statutes and decisions if such continuing acts of trespass were allowed to continue for seven years, under color of such deeds, a title by prescription would ripen in the defendants, unless it could be proved by extrinsic evidence (the deeds being regular on their face) that the defendants took the deeds with actual notice of the fraud.

Questions of General Importance Involved.

(*a*) Where a State for the purpose of promoting legitimate development of the great lumber industry, and securing stability to property rights in timber lands, has enlarged the equitable right to injunction for the benefit of the holders of perfect legal title to such timber lands, by conferring upon the Superior Courts of the state equitable jurisdiction to restrain and enjoin the boxing of trees for turpentine, or cutting of such timber from such lands, without averment or proof of actual possession in plaintiff, or irreparable injury to plaintiff or insolvency of defendant, may this enlargement of the equitable right be exercised by the Circuit Court of the United States in favor of citizens of other states against citizens of Georgia, or are such rights only to be obtained by suit brought in the State Courts?

The effect of the decision of the Circuit Court of Appeals, is to deny this remedy in the United States

Courts to non-resident owners of timber lands in Georgia, and incidentally to such owners of timber lands in other states in the Fifth Circuit.

The decision in other circuits on this question have sustained the jurisdiction of Federal Courts in such cases.

U. S. v. *Gulard Nat.*, 79 F. R., 21.
Consolidated M. Co. v. *Champion M. Co.*, 63 F. R., 540.
Lamb v. *Farrell*, 21 F. R., 8.

And the principle has been decided by the Supreme Court.

Gormley v. *Clark*, 134 U. S., 348.

(b) Where the averments of the bill charge that the defendants are committing continuing trespasses on land destructive of the timber constituting its chief value, and doing it under color of deeds received from persons having no title but regular on their face and duly recorded, which deeds coupled with such acts on and to the lands, would under the laws of the state, ripen into a perfect title by prescription in seven years, unless plaintiff can show by extrinsic evidence that defendants' title commenced in actual fraud or with notice of actual fraud, may a bill be maintained in the Federal Courts under the chancery practice to cancel such deeds as a cloud upon complainant's title, or does the averment that the grantors of defendants had no title or no valid title put the complainants out of court?

The Circuit Court has adopted the latter view,

and established a precedent for the whole circuit, denying to non-resident owners of real estate, an equitable remedy in the courts of the United States, which is fully established by the Supreme Court of the United States, the decisions of which on that point we think have in this case been misinterpreted.

Unless this precedent is reversed, the rule laid down will result in great losses to non-resident property holders in the Fifth Circuit, and wherever else the precedent is followed.

EQUITABLE JURISDICTION TO RESTRAIN CONTINUOUS TRESPASS DESTRUCTIVE OF TIMBER ON LANDS.

The equitable jurisdiction to enjoin continuing trespasses in the taking of turpentine and timber from what is generally called wild or timber lands, is based upon the inadequacy of a complete remedy at law, in that the injury is irreparable because the measure of damages collectible at law will not afford adequate compensation for the property destroyed, and because it would entail a multiplicity of suits, to recover the damages in continuing trespasses. The inadequacy of the remedies at law to protect property rights in timber lands has been recognized, and the right to relief in equity has been given by statutory enactments enlarging the common law limitations in most of the states which have great timber belts in their borders, and notably by the State of Georgia. The products of the "Georgia pine" forming one of the greatest sources of its wealth.

Act of General Assembly of Georgia, October 13, 1885.

> "Be it enacted by General Assembly that, from and after the passage of this Act, in all applications to enjoin the cutting of timber, or boxing the same for turpentine purposes, *it shall not be necessary to aver or prove insolvency, or that the damage will be irreparable;* provided the complainant has perfect title to the land upon which the timber is situated:—"

It will be observed that this part of the Act recognizes and confers a valuable *legal right.*

The Act then makes the following provisos relating to pleadings, and as to practice after filing the

bill, which, of course, would not necessarily control the procedure in chancery in the Federal Courts:

Practice Provisos as to Preliminary Orders.

> "And shall attach a copy of the same as an exhibit to the bill; and provided, further, that the chancellor granting said temporary restraining order shall require the complainant to give such bond as in his discretion he may deem proper (said bond to be approved by the clerk of the Superior Court) to answer the damages, if any, which may be sustained by the defendant by reason of the granting of said injunction, which bond shall be held and taken as appeal bonds; and if, on the final hearing of the cause damages are adjudged against the complainant, judgment shall be entered on said bond as in appeal cases."

This Act is carried into the Georgia Code of 1895, Section 4927, but amended by requiring only an abstract of complainant's title instead of a copy to be attached.

A full abstract of complainant's title appears in the bill itself in the case at bar. Also complainant's original title deeds were tendered (Rec., 10) and filed with the bill and are copied in the record, and the decree of the Circuit Court (Rec., 89), was that complainants had a perfect legal title.

It will be observed that the *practice* provisions of the act relate only to what is to be done to obtain *interlocutory* injunction in the State Court, and does not and cannot affect the jurisdiction on the final decree, for no interlocutory injunction might be asked

and if asked may not be given, and consequently no bond given because of interlocutory injunction.

It is only by keeping in mind the distinction between the parts of this act which recognize the equitable right, and the parts which relate to the duty of the Superior Court judge in granting injunctions *pendente lite* on interlocutory hearings that the decisions of the Supreme Court of Georgia on this subject can be rightly understood.

This was a legislative recognition of the necessity to protect the legal owners of the great timber lands of Georgia, against the cutting of timber and cutting of trees for turpentine on timber land, and a further recognition that irreparable injury was suffered in such cases of trespass even though the trespasser was solvent, and that the common law remedy was inadequate.

This is recognized by the Supreme Court of Georgia:

> "Where growing timber constitutes the principal value of the land, the cutting of it by a trespasser constitutes irreparable injury in the equitable sense, and may properly be restrained by injunction."
>
> *Camp* v. *Dickson*, 112 Ga., 878.
>
> Beach Mod. Eq. Jur., 720.

> "Where large numbers of growing trees are felled and carried away, the owners of these trees have no way of ascertaining the quantity of lumber made from the trees, and no accurate way of measuring their value. This could not

be done unless all timber trees are worth the same. This can hardly be the same."

Camp v. *Dickson*, 112 Ga., 881.

"When a case of fraud in obtaining and holding the possession of lands is involved, complainant may maintain a bill in equity to set aside the fraud; and also in connection with the suit, obtain injunction to stay a waste in cutting down and selling from the lot the valuable timber thereon."

"And this though the plaintiff be not in possession."

Griffin v. *Sketo*, 30 Ga., 300.

"The *decisions* of the Supreme Court of the state, giving the complainant having the legal title the right to bring such a bill without being in actual possession, will give the Federal Courts, in such matters, the same jurisdiction, just as effectually *as if there was a state statute.*"

Lamb v. *Farrell*, 21 F. R., 8.

Gormley v. *Clark*, 134 U. S., 348.

Defendant's Solicitors' Contention.

It is claimed by defendant's solicitors that in the cases of

Dixon, Mitchell & Co. v. *Monroe*, 112 Ga., 158,

Jenkins Bros. v. *Carmen*, 112 Ga., 476,

Morgan v. *Baxter & Co.*, 113 Ga., 144,

Woodstock Iron Works v. *Leake*, 118 Ga., 642,

the Supreme Court of Georgia construing the Timber Cutters' Act referred to, carried into Sec. 4927 of the Code of 1895, has ruled that to get the benefit of injunction under that Act, that the complainants must have "a perfect paper title" and that where complainants aver or show that they claim as heirs at law,—which creates a link in title which must be proved by oral testimony, that this does not make the perfect paper title which entitles the complainant to an interlocutory decree for injunction. And defendants argue as if those decisions were intended to cut off the complainants from having such relief by injunction on both interlocutory and final hearings unless such perfect paper title be averred and proved.

Reply.

The cases referred to were appeals from interlocutory orders for injunction *pendente lite,* in which the plaintiffs asked for interlocutory injunction solely upon the grounds stated in the practice provisions of Sec. 4927 of the Code. And those decisions go merely to the point that complainants' averments and proofs did not come up to the requirements for interlocutory injunction under the practice provisions of said section. Unless so limited the decisions above referred must be considered as overruled by the later decisions of the Supreme Court of Georgia.

Mr. Justice Cobb, delivering the opinion of the Supreme Court of Georgia in the later case of *Gray Lumber Co.* v. *Gaskin,* 122 Ga., 342, said:

"In the present case it was not shown that

the defendant was insolvent or that the damages were irreparable, or that the plaintiff had 'perfect title'; and hence the injunction, if warranted at all, must be justified under the last of the grounds above stated."

* * * * *

"The civil code (of Georgia), Sec. 4927 as amended by the Act of 1899 (Acts of 1899, p. 39) enlarged the office of the writ of injunction, so as to embrace cases where the cutting of timber was involved, by providing that such a trespass might be enjoined where the plaintiff has 'perfect title' to the land on which the timber is situated, or to the timber, without reference to the character of the damages or the solvency of the defendant. This section was intended to enlarge and not restrict the office of the writ; and while it does not state in terms that the cutting of timber may be enjoined when 'there exist other circumstances which in the discretion of the court render the interposition of the writ necessary,' the section was not designed to prevent the issuance of the writ in such cases."

* * * * *

"Did the plaintiff prove any facts which entitled him to an injunction? Prior to the passage of the 'timber cutter's act' now contained in the Civil Code, Sec. 4927, the rule was that 'Equity will not interfere to restrain trespass, unless the injury is irreparable in damages or the trespasser is insolvent, or there exist other circumstances which in the discretion of the court, render the interposition of this writ necessary, among which shall be the avoidance of circuity and multiplicity of actions.' Civil Code, Sec. 4916."

* * * * *

"In the present case the defendant had been for some time cutting the timber. It stood squarely upon a supposed right to do so. It

> threatened to continue to cut the timber from day to day until lawfully prevented from so doing. Action at law for damages would have been a complete remedy for injury sustained prior to the suit, but it would not have prevented further trespasses. Ought the plaintiff to be harassed and annoyed by being required to bring a new suit every day as long as the trespasses continue, when the whole controversy could be settled in one suit? As has been shown above, the code expressly authorizes the judge in his discretion to grant an injunction to restrain trespass in any case where under equitable principles the writ should issue, and enumerates as among such cases the prevention of a multiplicity of suits."

The equitable jurisdiction was sustained in that case, although the plaintiff was not in possession, nor was there any averment or proof of insolvency of defendant or that the damages were irreparable.

Gray Lumber Co. v. *Gaskin,* 122 Ga., 342.

In another still later case, in which there was no allegation or proof of insolvency of the defendant, the Supreme Court of Georgia said:

> "The plaintiffs having an interest in the land, did they show any right to the equitable remedy of injunction? This lot of land contains 490 acres. The defendant was engaged in cutting and removing the saw-mill timber thereon when the suit was instituted. The officers and agents of the defendant threatened to continue cutting the timber unless prevented from so doing. It will require some time to complete the cutting and removal of the saw-mill timber from so large a body of land. The defendants did not even attempt to show any title to support its claim of ownership. Under such circumstances if the plaintiffs show title to an undivided in-

terest in the land and timber, the defendant should be enjoined from committing a continuous and destructive trespass by denuding the land of its most valuable timber."

Camp v. *Garbutt Lumber Co.*, 129 Ga., 414.

A Different Ruling in Other Circuits.

Where the equitable right to maintain such a bill to restrain trespass destructive of timber lands, irrespective of the question of solvency or insolvency of defendants, is recognized by the highest courts of the state, the Federal Judges in other Circuits have maintained the right of non-residents to the same measure of relief in the United States Courts.

"A bill alleging trespass by defendant on the plaintiff's land, and the cutting and removal of growing trees therefrom, to the injury of the inheritance, and threats by the defendant to continue such trespass; and praying injunction to restrain same; constitutes a cause for equitable relief, and a Court of Equity having acquired jurisdiction under such a bill will decree an account and satisfaction for the injury already done. Such a bill, as praying an injunction and accounting, is not multifarious."

U. S. v. *Burlard et al.*, 79 F. R., 21.

Consolidated Mining Co. v. *Champion Mining Co.*, 63 F. R., 540.

King v. *Stuart*, 84 F. R., 546.

As stated by Judge Paul in the case last cited, it is seldom possible to prove that any more irrep-

arable injury is committed than the destruction of the timber itself, and it is seldom that it can be proven in advance of judgment that the trespasser on such a lot is insolvent.

The Georgia statute, as we have seen, in effect makes the boxing or cutting of timber trees *per se* irreparable injury, certainly when the trespass is continuous.

In the case at bar, it was averred (Rec., 9) that unless the trespasses being committed by the defendants were enjoined complainants would suffer irreparable injury. If complainants were forced to stand by until the lands were denuded of timber, and could only recover at common law the provable value of the timber at the time cut—it would be equivalent to giving a trespasser the right of eminent domain, and effectually cut off the holding by the true owner of timber lands for the owner's own future use or for higher values. And the multiplicity of suits makes the injury irreparable at law.

Jurisdiction to remove cloud on title.

The Georgia statute provided:

> "Adverse possession of lands, under written evidence of title, for seven years, shall give a like title by prescription. But if such written title be forged or fraudulent, and notice thereof be brought home to claimant before or at the time of the commencement of his possession no prescription can be based thereon." Code Ga. (1895), Sec. 3589.

It will be observed that if the color of title be a deed regular on its face as in the case at bar, (where it is charged (Rec., 6) that it was duly recorded in the county records) the fact that defendant took the deed with notice of the fact that the grantor had no title, is a fact which must be brought home to the defendant by evidence *dehors* the deed.

Also where the defendant has entered upon the lands under color of the deed and is exercising such acts of ownership as boxing the trees and cutting the timber, if allowed to continue he is not only destroying the property, but he is using the deed to destroy complainant's title, and put one in himself by prescription under color of the deed.

Possession in Complainant Non-Essential in Georgia.

The only essentials to be proven by complainant to maintain a bill for removal of cloud on title, are stated in the code as follows:

> (1) "That he cannot immediately or effectually maintain or protect his right by any other course of proceedings open to him."

(2) "That the instrument sought to be cancelled is such as would operate to throw a cloud or suspicion on this title and might be vexatiously or injuriously used against him."

(3) "That he suffers some present injury by reason of the hostile claim of right, although such a claim be not asserted adversely or grievously, he has reason to apprehend that the evidence upon which he relies to impeach or invalidate the same as a claim upon his title, may be lost or impaired by lapse of time." Code Ga. 1895, Section 4893.

It is not necessary that plaintiff be in possession to maintain such bill.

Griffin v. *Sketo*, 30 Ga., 300 (*supra*).

"The owner of the legal title in possession may lie by till his possession is invaded, or his title attacked, before taking steps to vindicate his right, and lapse of time forms no bar to a petition brought to remove a cloud or to quiet title by a plaintiff in possession."

Pierce v. *Middle Ga. Land Co.*, 131 Ga., 102.

18 A. & E. Ency. Law, 2nd Ed., p. 124.

"But when a plaintiff is out of possession he must seasonably apply to a court of equity for cancellation of an alleged cloud on his title after notice of it or he will be turned off because of laches. * * * Equity follows the analogy of the law and a plaintiff's right to cancel a cloud on his title will not be denied him when he applies within seven years after the assertion of the void title which is apparently good, and there are no sepecial circumstances demanding an earlier application."

Pierce v. *Middle Ga. Land Co.*, 131 Ga., 102.

In an equitable petition to cancel a deed apparently valid on its face but alleged to be void, it was

not alleged that the plaintiff was in possession, nor was there any allegations that the defendants were insolvent. But it was alleged that the defendants:

> "Had cut timber to the amount of $2,000 from the land, and were continuing to cut the same, and to use it for turpentine purposes and that the land was of the value of $10,000."

The equitable jurisdiction for injunction, and to cancel defendant's deed as a cloud on plaintiff's title was sustained.

Pierce v. *Middle Ga. Land Co.*, 131 Ga., 100.

The statutes of the state, and the decisions of the highest courts of the state were called to the attention of the Circuit Court of Appeals, in the brief of complainant's counsel, and also on petition for rehearing (Rec., 418), but were ignored.

It would seem that the jurisdiction of the Circuit Court in this case, to give effect to the equitable remedies allowed under the state statute and decisions, as well in respect to injunction to restrain continuing trespasses, as to removing cloud on title, and quieting title, may be rested upon the principles, stated and the authorities reviewed in *Lawson* v. *U. S. Mining Co.*, 207 U. S., 1.

Referring to the motion to dismiss for want of equitable cognizance, which they did not sustain, Mr. Justice Brewer, delivering the opinion of the court, said:

> "At the time the motion was made, the case presented was one of a clear legal title to the four mining claims by patent from the United States, and an unauthorized entry by subterranean workings into the ground below the sur-

face, and the mining and extracting of ores therefrom,—a case for restraint by injunction, which was part of the relief asked for in the bill."

Lawson v. *U. S. Mining Co.*, 207 U. S., 10.

Grounds of C. C. of Appeals decision.

The said Circuit Court of Appeals, in its opinion, after saying that the bill could not be maintained because the averments were not sufficient to show complainants in possession,* said (Rec., 415):

"If this difficulty were out of the way, do the averments of the bill show such apparent title in Ashburn as to constitute a cloud on complainant's title? The conveyance was to Ashburn by McIntyre and one Watson. There are no allegations to show that either one of them had apparent title to convey. They are strangers to the title set up by the complainants. *If the complainants were in possession* of the lot, and Ashburn sued for it, this deed to him, on the averments of the bill would not enable him to recover. It would not make a *prima facie* case for him. No facts are alleged that, taken with the deed, would affect the title of the complainants, or interfere with their possession, if they were in possession. Ashburn's title, as shown by the bill, would fall of its own weight and the complainants would never be troubled to offer evidence. Such a deed, under the facts averred in the bill, is not a cloud on title."

After quoting authorities the court continues:

"The Supreme Court endorses the view that a void deed creates no such cloud as confers equity jurisdiction. *Hannewinkle* v. *Georgetown*, 82 U. S., 547; *Rich* v. *Braxton*, 158 U. S., 375."

* The averments of the bill, as to grants, conveyances heirship, title and character of the lands are equivalent to averments of constructive actual seizin in complainants — No more has to be averred than has to be proved.
Barr vs Gratz 4 Wheat 222
Litt. & Cranch 7 X 4

The Court of Appeals applied the same conclusion to the case of Crawford. (Rec., 416.)

We respectfully submit that the authorities cited and applied by the court to the supposed case of Ashburn's being out of possession, and having done no acts to interfere with the possession of complainants, are not applicable to the allegation of this bill.

It is true that from the nature of the lands,—they being covered according to the allegations with a heavy growth of pine timber,—the north half of lot 353, to which the language of the Circuit Court of Appeals was addressed was covered with a heavy growth of timber, they were susceptible only to possession in a limited sense. And the same is true as to lot 383.

The legal constructive possession in a case of that sort is in the possessor of the legal title:

Gage v. *Kaufman*, 133 U. S., 471.

Thompson v. *Etowah Iron Co.*, 91 Ga., 542.

Rogers v. *Hoskins*, 15 Ga., 276.

Simmons C.C.Co vs Doran 142 US 418-449

"Where two persons claim to have actual possession of the same land, he is deemed in possession who has the legal title, and the other is a trespasser."

Code of Ga. (1895), Sec. 3878.

"A conveyance of wild and vacant lands give a constructive seizin thereof, in deed, to the grantee, and attaches to him all the legal remedies incident to the estate."

Green v. *Liter*, 8 Cranch, 229.

Barr v. *Gratz*, 4 Wheat., 213.

Averments and proof of trespass and waste committed by defendants, do not constitute such possession in defendants as to prevent the true owner from filing a bill quia timet

Simmons C.C.Co vs Doran 142 US 418

But that does not militate against the fact that there was a certain kind of possession, though a wrongful one, in defendants.

Indeed, the averments of the bill charged, as we have seen, that Ashburn had leased the timber on the north half of lot 353 for cutting and had already boxed the trees on other parts of lot 353 and taken turpentine therefrom, and Ashburn's lessee was about to cut the timber on the north half of said lot. Also that Crawford had boxed the trees on lot 383 and was proceeding to take turpentine therefrom; and that court had just held in the preceding paragraph of the opinion (Rec., 415):

> "These averments certainly do not show that the complainants are in possession of the property, and we think that they are intended to show that Ashburn and his lessee are in wrongful possession of it."

There may be a wrongful transitory possession by a defendant.

Rich v. *Braxton*, 158 U. S., p. 404.

Whatever kind of possession the defendants Ashburn and Crawford did have it is charged originated in the fraud of McIntyre and McMullen, who betrayed their trust toward complainant, of which it is charged and proved the defendants had notice. (Rec., 6-7-8.)

It is respectfully submitted that those averments:

> "Are facts alleged that, taken with the deed affect the title of the complainants, and interfere with their possession."

It is respectfully submitted that the authorities cited by the Court of Appeals go no further than

to hold that a deed or chain of deeds *void on their face* do not constitute cloud on title until some *act is done* under them, which endangers either the title or possession of the holder of the legal title.

Pierce v. *Middle Ga. Land Co.*, 131 Ga., 102.

In the case of *Hannewinkle* v. *Georgetown*, 92 U. S., 547, there was no allegation of entry on the land or threatened damage to the property itself, the relief sought was simply to prevent Georgetown from conveying to somebody else its alleged right under a void tax assessment, alleged to be void on its face.

And the court said, "the sole ground of the present bill is the illegality of the tax."

> "There must exist in addition, special circumstances bringing the case under some recognized head of equity jurisdiction such as that the enforcement of the tax would lead to a multiplicity of suits, or produce irreparable injury, or, where the property is real estate, throw a cloud upon the title of the complainant."
>
> Idem, p. 549.

In the case of *Rich* v. *Braxton*, 158 U. S., 375, the Supreme Court say, p. 405, that whether the tax sale was void on the face or not, if the state law allows it to be attacked, it gives a right on which "the plaintiffs were entitled to invoke the aid of a Court of Equity" under the rule of *Holland* v. *Challen*, 110 U. S., 15.

They point out (pp. 405-6) that the contrary rule laid down by some courts where the invalidity ap-

pears on the face of the document, is subject to exception where "particular circumstances are stated showing the necessity by equity, *either for preventing a multiplicity of suits, or other vexation.*"

And although in that case the bill averred the tax sale void, and that no title passed to the grantees, and attacked a succession of deeds based on it as clouds on title, the court said, p. 406:

> "It is not clear that their invalidity can be placed beyond question or doubt, without evidence *dehors* those deeds."

It was averred in the bill (Rec., 6) that the deed from McIntyre to Ashburn "is recorded on the records of the clerk of the Superior Court of Colquitt Co. Ga. Feb. 1, 1890." This is equivalent to an averment that the deed attacked was regular on its face. And the deed itself put in evidence by Ashburn shows it. (Rec., 318.)

Here also allegations are made of acts done by the holder of the deed attacked, which not only destroy the principal value of the property itself and prevents the enjoyment of the possession, but is an attack on the title, in that if the acts were allowed to continue and be completed during seven years after the date of the deed, under color of which the acts are done, might, under the Georgia law, ripen into a good prescriptive title.

Pierce v. *Middle Ga. Land Co.*, 131 Ga., 102.

That this danger was not fancied but real, is shown by the fact that, when the case came to the proof in the court below Ashburn sought (Rec., 24) to set up *prescriptive* title to the north half of lot

353 based upon alleged acts of ownership for more than seven years under color of the deed from McIntrye & Watson, of 1890. And this was disproved by evidence extrinsic of the deed. (See post, p. 53.)

Crawford also sought to set up seven years' prescriptive title to the south half of lot 353 (Rec., 28), and this was disproved by the testimony of the grantee in the deed under which he claimed, showing that the deed had been altered and antedated by some one subsequently. (See post, p. 107.)

It will be observed that the length of time during which acts of trespass under claims of ownership, have been going on, is a matter of oral proof extrinsic to the deed. The evidence of the limits of the time may in a very short time be lost by the death or inaccessibility of witnesses, and be perverted by others.

If the defendant was entirely out of possession and had not committed, and was not threatening to continue, acts indicative of ownership, then the authorities cited as to a deed void on its face, might apply, if the local law was different, because the bill averred that Ashburn's grantees had no title. But it is the deed, in connection with the acts of interruption of complainants' possession, and tending to establish possession and ownership in the defendants which makes the deed a cloud on complainants' title.

For the purpose of creating prescriptive title it is not necessary that McIntyre and Watson should have had title. But simply that the grantee did not know that fact and took the title without fraud.

ante p. 21

While it is averred in the bill that Ashburn took with notice of complainants' title, and with knowledge of the fact that his grantors had none, *that is a fact not apparent on the face of the deed*, and a fact which rests on extrinsic proof, liable to be lost or become inaccessible.

This itself takes this case out of the rule referred to.

It is respectfully submitted that under the peculiar laws in Georgia, relative to seven years possession under color of title, it cannot be questioned that where a party is interfering by continuing trespasses with complainants' title, and doing it under color of a deed, by acts which would ripen into prescriptive title, unless the deed can be shown by extrinsic evidence, to have been obtained by fraud, the fraud not appearing on the face of the deed, that such deed does throw a cloud upon the complainants' title.

Pierce v. *M. Ga. L. Co.*, 131 Ga., 102.
Griffin v. *Sketo*, 30 Ga., 300.
Camp v. *Dickson*, 112 Ga., 879.
King v. *Stuart*, 84 F. R., 546.
Gray Lumber Co. v. *Gaskin*, 122 Ga., 342.
Camp v. *Garbut*, 129 Ga., 414.

What has been said in regard to the allegations giving jurisdiction to file the bill to restrain continuing trespasses on timber lands, to quiet title and for removing cloud on title, in regard to the north half of lot 353, as to Ashburn, is equally applicable to Crawford's fraudulent deeds to lot 383, under the McIntyres and McMullens (Rec., 7 and 8), and

his continuing trespasses on that lot, as well as on the south half of lot 353.

The allegations of the bill as to the south half of lot 353, is that both Crawford and Ashburn had been committing continuous trespasses as to that. Ashburn is averred to have boxed the trees and taken the turpentine therefrom (Rec., 7), and Crawford had turpentined it, and the trees had been largely cut under them from it. (Rec., 8.)

It is averred that Crawford was engaged in cutting timber on parts of lot 354 (Rec., 8). Crawford admits in his answer that he was working turpentine boxes on lot 384 (Rec., 29).

FRAUD.

The jurisdiction in this case, however, does not rest alone on the bare right to restrain trespass and to remove cloud on title. Conspiracy to defraud the complainants is charged and proved against all the defendants, by the fixing up of false and fraudulent titles. It is charged that by reason of the conduct of the defendants, the complainants are unable to realize on the lands, either by sale or otherwise.

> "A suit in equity to annul a forged deed of land and have it cancelled and the record of it declared void, brought by the legal owner of the land against the grantee named in the forged deed, while he is out of possession of the land, is not taken out of equitable jurisdiction by the fact that the deed is void. It is not necessary before bringing such suit that the complainants should obtain possession of the land."
>
> *Bunce* v. *Gallagher*, 5 Blatchford, 481 Federal Cases, Vol. 4, p. 2133.

In a case in which the plaintiff had a perfect prescriptive title, and was out of possession, the Supreme Court, irrespective of any state statute, allowed him to maintain a bill to protect his title against the legal title, over the objection that the bill could not be maintained, because the complainant was out of possession at the time of bringing suit. The court distinguished the case from cases *quia timet*, and allowed the bill to be maintained.

Shearon v. *Tucker*, 144 U. S., 533.

The court in that case quotes, with approval, the following from "Pomeroy's Equity Jurisprudence":

> "It is absolutely impossible to enumerate all the special kinds of relief which may be granted to place bounds upon the power of the courts in shaping the relief in accordance with the circumstances of the particular case."
>
> Idem, 533.

The Supreme Court says:

> "There is a class of cases which which hold that where there is actual fraud, no remedy at law is complete and adequate, except that which removes the fraudulent title."
>
> *Wheiman* v. *Conklin*, 155 U. S., 328.

The facts set up in the bill show that the defendants were all concerned in a common fraud upon these lands, through the connivance and participation of the agents of the complainants, by acts recreant to their agency, and the evidence shows that they proceeded, by fraudulent means, to divide up the lands and timber among themselves. Wm. McMullin and the McIntyres were the active agents in assisting Crawford in fixing up the fraudu-

lent title to lot 383. A. T. McIntyre, Jr., conveyed as his own to Ashburn a half interest in lot 353 at a time when he was employed to defend the title of the complainants. A. T. McIntyre, Sr., caused his son's administrator to convey 383 to Crawford while he was employed to defend the title of complainants. Wm. McMullin in breach of his trust relationship, without notice to the complainants, secretly levied an attachment, for alleged services due him, on one of the lots (354), and obtained a judgment against it and was proceeding to sell it, in actual fraud of the complainants' rights and without notice to them. It is averred and proved that Ashburn and Crawford took the deeds under which they claim with notice that they got no title, and of complainants' title. McMullen obtained by fraud a judgment on attachment without notice on lot 354.

> "The Federal Court has jurisdiction to set aside judgment of the State Courts obtained by fraud."
>
> *Barrow* v. *Hunton*, 99 U. S., 80.
> *Cowley* v. *Railroad*, 159 U. S., 579.
> *Robb* v. *Vos*, 155 U. S., 13.

The Circuit Court decreed against McMullin (Rec., 89) and no appeal was taken by him.

> "The jurisdiction in equity attaches unless the legal remedy, both in the respect of the final relief, and the mode of obtaining it, is as efficient as the remedy which equity could confer under the same circumstances.
>
> When the charge of fraud involves the consideration of principles applicable to fiduciary

and trust relations, equity has jurisdiction over it as fraud has a more extensive signification in equity than it has at law.

When a party injured by fraud is in ignorance of its existence, the duty to commence proceedings arises only upon discovery, and the mere submission, in the absence of other circumstances, does not take away the right of action, unless such acquiescence continues for the period limited by the statute for the enforcement of the right."

Kilburn v. *Sunderland,* 130 U. S., 505.

"And as the remedy at law in the case in hand was rendered embarrassed and doubtful by the conduct of the defendants, and fraud has in equity a more extensive signification than at law, and as charged here involved the consideration of the principles applicable to fiduciary relations between the parties throughout the period of their connection, we concur with the Supreme Court of the district in sustaining the jurisdiction."

Idem, 515.

"When a case of fraud in obtaining and holding the possession of lands is involved, complainant may maintain a bill in equity to set aside the fraud; and also in connection with the suit, obtain injunction to stay a waste in cutting down and selling from the lot the valuable timber thereon.

And this though the plaintiff be not in possession."

Griffin v. *Sketo,* 30 Ga., 300.

JOINDER OF PARTIES PLAINTIFF.

Mrs. Jennie L. Graves and her daughter Ida and Minnie are tenants in common as to lot 353, and therefore were properly joined in any suit for the protection of their common interest therein. They could even sue together in ejectment to recover the lot if necessary.

Hicks v. *Rogers*, 4 Cranch., 165.
Poole v. *Fleeger*, 11 Pet., 185.
Horton v. *Fulton*, 130 Ga., 468.

Mrs. Jennie L. Graves is a warrantor of the title she has conveyed to her daughters in the other lots, 354, 383 and 384, and as such is always a proper, although not a necessary, party to any suit brought by them affecting the title, so that she is properly joined with them as to those lots.* The deed of Jennie L. Graves to her daughters in 1889 (Rec., 339) and averment of bill (Rec., 5) and her joinder with them in the suit was equivalent to an assent by her as administratrix to the suit by the heirs at law of Cyrus S. Graves.

The qualified title to lands which remains in an administrator under Georgia law for payment of debts, and which the administrator can relinquish at any time was released certainly as early as 1889. And there being no debts of Cyrus S. Graves, the lands vested in the heirs, the mother and daughter, by operation of law.

Code of 1861, Sec. 2452.
Code of 1895, Sec. 3355.

* 8 A & E. Ency Law 2nd Ed p 203
Redwine v Brown 10 Ga 311
Her deed to her daughters contained a covenant to defend. (Rec 339-340)

"If there be no administrator or if the administrator consents thereto, the heirs at law may take possession of the lands, or may sue therefor in their own right."

Code of 1861, Sec. 2454.

Code of 1895, Sec. 3357.

"The heirs at law of a deceased intestate can maintain an action of ejectment to recover the possession of land against a mere wrongdoer."

Carruthers v. *Bailey*, 3 Ga., 105.

JOINDER OF PARTIES DEFENDANT.

Several Trespassers on One Tract.

Crawford and Ashburn were charged as joint trespassers on lot 353, and one or the other of them were charged with committing continuous trespasses on each of the other three lots, all together composing the square tract of nearly four square miles. It could not be certainly known how they would claim. It was for them to set up in the defense their separate claims, if they were separate.

Greer v. *Mezes*, 24 How., 268.

When it came to the proofs it appeared that Crawford and Ashburn claimed under deeds which purported to give them undivided half interests in lot 353, although in their answers one claimed the south half and the other the north half of said lot.

(Post p. 70 and 82)

Ashburn's lease Jan 23, 99 to Hightower which is attacked in the bill, embraced 368 acres of timber on lot 353, which is two thirds of the whole lot (Rec 363-368).

That while Crawford in his answer disclaimed title to lot 384 he admitted he had been working the turpentine thereon, claiming under one Authey. (Rec., 29.)

That while Ashburn (Rec., 25) disclaimed title to each of the four lots except the north half of 353, and stated he did not intend to trespass on the lots disclaimed, he did not deny in his answer that he had already trespassed on them. It was shown in proof and admitted by him (Rec., 291) that pending the suit he proceeded to take out and did take out all the turpentine on lot 383, claiming to do so under Crawford. That while Crawford disclaimed title to the north half of lot 353 (Rec., 28), he or his firm under written authority from him pending the suit cut off the timber on said north half of 353 (Rec., 293, 354, 290) claiming a right to do so under Ashburn and Hightower who were under restraining order not to do so. Although Ashburn in his answer disclaimed title to the south half of lot 353 and claimed only the north half of that lot, he claimed under a deed which gave him only an undivided half interest in the whole lot (Rec., 318) and he testified that there never had been any documentary partition between him and Crawford or Crawford's predecessors in title. (Rec., 290.) Ashburn has also taken a conveyance from Crawford to him for the south half of lot 353, pending the suit. (Rec,. 353 and 290.) These facts taken in connection with the allegations and proofs showing that both Ashburn and Crawford derived whatever color of title they had through the acts of the McIntyres in

fraud of the plaintiff's rights, made it both proper and necessary that Crawford and Ashburn be joined in the same suit. If only one of them had been made defendant originally, it would have been proper to have brought in the other as defendant for acts done pending the suit, the one claiming under the other, either by amendment or supplemental bill.

The Four Lots as One Tract.

The four lots, 353, 383, 384 and 354, forming a square tract of nearly four square miles of land, about which suit was brought, were all held under one title by complainants from a common grantee from the state, and common ancestor, and trespasses on the entire tract by defendants is charged and proved.

For the purposes of the suit the four lots will be treated as one tract.

Rich v. *Braxton,* 158 U. S., 384.

The mere fact that Ashburn has disclaimed title in his answer to all but the north half of lot 353, should not affect complainants' right to injunction as to the whole tract, where it is shown that pending the ~~trial~~ suit he has trespassed on all the lots, and taken the valuable products therefrom. The tenants on lot 384 are even now claiming under him.

Destruction by Defendants of All the Trees Pending Suit.

We respectfully submit that jurisdiction over the bill rested upon the conditions as they existed at the commencement of the suit. That the fact that defendant Crawford, pending the suit, cut all the trees off of lot 383 and that defendant Ashburn cut all off the north half of 353, and that, too, in the face of a restraining order as to 353 cannot, there being proper prayers for accounting, prevent the court from awarding complainants the values of the products so taken.

It was error in the Circuit Court to conclude that because the court had granted no restraining order against Crawford, that he could destroy the jurisdiction acquired at the time of filing the bill, by destroying the trees.

And the court having jurisdiction for one purpose, and plaintiff having shown perfect title, and Crawford's claim of title having been shown to be made up of forged deeds, it was the duty of the court of equity to so decree, and grant relief.

Equitable Cognizance Existing for One Purpose Complete Relief Given.

> "Where a court of equity obtains jurisdiction of the parties and the subject matter, while the case is pending, all needed and appropriate re-

lief should be granted, and the case should be retained until this is done."

Baxter v. *Camp*, 129 Ga., 465.

"If the controversy contains any equitable feature or requires any purely equitable relief which would belong to the exclusive jurisdiction, or involve any matter pertaining to the concurrent jurisdiction, by means of which a court of equity would acquire, as it were, a partial cognizance of it, the court may go on to a complete adjudication, and may thus establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority."

U. S. v. *Union Pac. Ry. Co.*, 160 U. S., 52.

"A court of equity which has obtained jurisdiction of a controversy on any ground or for any purpose, will retain such jurisdiction for the purpose of administering complete relief and doing entire justice with respect to the subject matter. This doctrine seems to rest on the same principle which permits a court of equity to take jurisdiction in the first instance, because the remedy is incomplete, or to avoid a multiplicity of suits."

16 Cyc., p. 106.

"By virtue of the rule the court, when its jurisdiction has been invoked for any equitable purpose, will proceed to determine any other equities existing between the parties connected with the main subject of the suit, and grant all relief requisite to an entire adjustment of such subject, provided it be authorized by the pleadings. Relief of an equitable character may thus be incidentally obtained when an original bill would not lie for such relief alone."

16 Cyc., pp. 107 and 109.

Wrongful abstraction of turpentine and destruction of timber pending suit, not deprive court of jurisdiction.

"The court is not restricted to an adjustment of the rights of the parties as they existed when suit was brought, but will give relief appropriate to events occurring pending the suit."

16 Cyc., p. 108.

Taylor v. *Taylor*, 43 N. Y., 578.

1 Story Eq. Jur., Secs. 64 and 709.

Franklin Ins. Co. v. *McCrea*, 4 Green (Iowa), 229.

Turner v. *Thomas*, 13 Bush (Ky.), 518.

Miller v. *McCan*, 7 Paige (N. Y.), 451.

"In taking the account the master was not limited to the date of the decree. In such cases it is proper to extend the account down to the time of the hearing before him, unless the infringement ceased prior to that time. The rights of the parties are settled by the decree, and nothing remains but to ascertain the damages and adjudge their payment. The practice saves a multiplicity of suits, time and expense, and promotes the ends of justice. We see no well founded objection to it."

Rubber Co. v. *Goodyear*, 9 Wall, 800.

Incidental Accounting.

In a New York case, Church, C. J., said:

"Having adjudged that the representatives of Daniel were entitled to a conveyance of the south fifty acres, and the rents and profits thereof, it was entirely competent for the court, in the exercise of its comprehensive equity powers, and as an incident to the principal relief granted to compel James, who had wrongfully enjoyed them, to account for them."

* * * * *

"Whenever a party has received rents and profits belonging to another, he is bound to account for them; and when he is in a court of equity in respect to the title of property out of which the rents and profits accrued, and the title is adjudged against him, the judgment would fall far short of a complete determination of the controversy, if it did not award restitution, including the rents and profits down to the time of trial."

Taylor v. *Taylor*, 43 N. Y., 584.

Powell vs Cheshire 70 Ga 357

"A bill alleging trespass by defendant on the plaintiff's land, and the cutting and removal of growing trees therefrom to the injury of the inheritance, and threats by the defendant to continue such trespass; and praying injunction to restrain same; constitutes a cause for equitable relief, and a court of equity having acquired jurisdiction under such a bill, will decree an account and satisfaction for the injury already done. Such a bill, praying injunction and accounting, is not multifarious."

U. S. v. *Gurlard et al.*, 79 F. R., 21.

Consolidated Mining Co. v. *Champion M. Co.*, 63 F. R., 540.

Carrington vs Lentz 40 F.R. 18

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"Having obtained rightful jurisdiction of the parties and the subject matter of the action for one purpose, the court will make its jurisdiction effectual for complete relief. Story's Eq., 64 K."

Ober v. *Gallaher*, 93 U. S., 206.

Gormley v. *Clark*, 134 U. S., 349.

The Importance of the Question.

The decision of the Circuit Court of Appeals as well as that of the Circuit Court to be reviewed is one of the most far reaching in its results on the rights of non-residents ever made.

Georgia is one of the greatest pine timber states in the Union, the timber industry has reached enormous proportions.

It is seldom that the owner of such lands has any greater possession of a timber lot than the constructive possession given by fee simple title.

Georgia has given the owner of the true title the right to maintain a bill in such case, though out of actual possession, and though the trespasser be solvent, and which recognizes such trespasses as irreparable injury, *per se*.

The idea expressed by the Circuit Court of Appeals that the destruction of shade trees alone, can be enjoined, is antiquated.

To hold that non-residents cannot maintain such

a bill in a Federal Court to restrain the trespasses and cancel the deeds under color of which they are done, is to take away from a large class of non-resident owners of timber lands in Georgia, the power to have their rights preserved in the forum provided for their protection by the Constitution and laws of the United States.

THE CASE ON THE EVIDENCE.

COMPLAINANTS' TITLE, 383, 353, 384, 354.

Complainants' Chain:

EXHIBIT 41.

Plot and grant to lot 383 State to Eli Graves offered (Rec., 234). Copied (Rec., 332-333).

EXHIBIT 42.

Plot and grant to lot 384 State to Eli Graves offered (Rec., 234). (Copied (Rec., 334-385).

EXHIBIT 43.

Certified copy plot and grant to lot 384 State to Eli Graves offered (Rec., 299). Copied (Rec., 336-337).

EXHIBIT 38.

Plot and grant to lot 354 State to Eli Graves offered (Rec., 234). Copied (Rec., 326-327-328).

EXHIBIT 44.

Certified copy grant to lot 353 State to Eli Graves offered (Rec., 235). Copied (Rec., 338-339).

McIntyre & McIntyre had received the original plots and grants from Spencer Graves, son of Joel S. Graves, for the Graves heirs, when Mrs. Jennie L. Graves demanded them from Col. McIntyre in 1899 he did not turn over the original plot and grant

to 353. He claimed he had turned over all he had received from Spencer Graves or had. (Rec., 235-237; see, also, Rec., 342.) The certified copy of the grant is competent. And both Ashburn and Crawford claim under that grant, according to the statement of their solicitor *in judicio*. (Rec., 179.)

EXHIBIT 4.

Deed Eli Graves to Joel S. Graves March, 1848, recorded Thomas County, March 15, 1849. (Identified Rec., 225; offered 235; copied Rec., 301) includes above, among 40 other lots.

The above original grants and deeds come from proper custody, to-wit, from Spencer Graves, the son of Joel S. Graves. See testimony J. L. Graves (Rec., 225). Letter of McIntyre August 12, 1897 (Rec., 325), testimony of McMullen p. 117.

All the parties claim under this deed.

EXHIBIT 3.

Deed Joel S. Graves to Cyrus S. Graves dated June 8, 1855. (Identified Rec., 225; offered 235; copied Rec., 300.) Recorded Thomas County, June 11, 1855, as shown by entry on it, also by testimony Clerk Superior Court Thomas County on comparison with record of it on the book. See testimony Groover (Rec., 131-132). conveyed lots 353-354 383-384-345-437

A question having been raised as to the sufficiency of the probate for record, in Thomas, June 11, 1855, of this deed (not its proper execution) to save any possible question it was again probated by one of the subscribing witnesses who was still living March

30, 1889, and, Colquitt County having been cut off from Thomas in 1856 (Rec., 135), the deed was again recorded, this time in Colquitt County, April 2, 1889. (Rec., 301.)

This deed comes also from proper custody. J. L. Graves testified it was among her husband's effects, when he died. (Rec., 248-224-225.) After her husband's death E. O. Thompson acted as her agent for a time in looking after the payment of taxes on the lands and she left deed with him (Rec., 246-247). She got the deeds and grants from Thompson and delivered them to Col. McIntyre in 1889. (Rec., 247.) She got them back from Col. McIntyre and turned them over to her counsel in 1899 in this case. (Rec., 244.)

Also both Crawford and Ashburn claim under this deed for the south and north halves respectively of 353. Statement of their counsel (Rec., 179-180) and answer Ashburn (Rec., 67-68).

CYRUS S. GRAVES HEIRS.

Cyrus S. Graves intermarried with Jennie L. Graves in New York in 1857 and moved to Georgia in 1859, testimony of Jennie L. Graves. (Rec., 223.) They had only two children, Ida J. and Minnie C. Graves. (Rec., 223.) Cyrus S. Graves died in the confederate service in 1862. He died intestate (Rec., 236). Jennie L. Graves took out letters of administration November 3, 1862. Exhibit 68. (Rec., 362.)

Under the laws of Georgia, the wife and daughters inherited equally.

Code of 1861, Sec. 2452.
Code of 1895, Sec. 3355.

Even though there be an administrator, the heirs can maintain action to recover real property against a trespasser.

Carruthers v. *Bailey*, 3 Ga., 105.

Assent to Heirs Taking Lands by Administratrix.

Jennie L. Graves assented to her daughters taking full title to the whole of their shares. In fact in 1889 she thought (Rec., 246) she had put the title to all the six lots, including her own interest in lots 383, 384, 354 and 353, but the deed of March 30, 1889 (Exhibit 45; Rec., 339), drafted by Colonel McIntyre (Rec., 248), which she made to her daughters, only embraces five lots and did not embrace lot 353. For that reason Jennie L. Graves and her daughters are tenants in common as to lot 353, while the full title of the other lots is in the daughters.

Mrs. Graves testified that there were no debts. And there could be no more effective way for her as administratrix to consent to the heirs taking possession of the land than by her own conveyance of her interest to her daughters in five of the lots, and by her joinder with her daughters as complainant to the present suit, both as tenant in common with them as to lot 353 and as grantor and warrantor to them of her interest conveyed to them as to the other lots.

"If there be no administrator, or if the administrator appointed consents thereto, the heirs at law may take possession of the lands, or may sue therefor in their own right."

Code of 1895, Sec. 3357.

Code of 1861, Sec. 2454.

Attack of Defendants on Deed Joel S. Graves to Cyrus S. Graves. Exhibit 3.

(1) First it is contended that it was a deed to secure a debt and not a fee simple deed. The deed purports to be in consideration of $2,940. (Rec., 300.)

Reply.

Crawford testified that J. L. Graves told him (in 1899) (after the controversy was on) that her husband received the land as security for a debt of $6,000. (Rec., 167.) Mrs. Graves denies the statement and the fact and says she told him her husband received it in payment of a debt. (Rec., 226.)

The rights of Mrs. Graves and her daughters would not be different against trespassers even if it were true, no evidence being offered to show that any such debt was paid.

Morrow v. *Sawyer,* 82 Ga., 226.

(2) It is next claimed that the first *probate* in Thomas County, June 11, 1855, by one of the subscribing witnesses Samuel A. Graves before Torquil McAuley, J. P., *was defective* in not setting forth

that the deed was *delivered* and that therefore it was improperly admitted to record.

This contention is not material except as it may affect Crawford's contention that lot 383 was conveyed by Joel S. Graves to James J. Redd in 1852, although he does not claim it was recorded at all until June 26, 1858 (of which record there is no proof), and therefore if the deed from Joel S. Graves to Cyrus S. Graves in 1855 was properly admitted to record in Thomas County June 11, 1855, it takes precedence over the alleged deed to Redd in 1852, aside from the question of the latter being a forged or fictitious deed. *

Crawford claims that this Redd deed was recorded in Colquitt County in 1858 and the Registry Records, burnt up in 1881 (Rec., 265 and 267), prior to the second record of the Cyrus S. Graves deed, recorded in 1889.

As to lot 353 both Crawford and Ashburn claim as already pointed out, under the deed to Cyrus S. Graves, although they show no deed connecting themselves with Cyrus.

Reply.

Even if it were true that the Cyrus S. Graves deed was improperly admitted to record, the objection is not available in favor of any one except one who has acquired from *Joel S. Graves* a *bona fide title.* The deed is an ancient deed.

The deed is attested "Signed, sealed and delivered" in the presence of witnesses. (Rec., 300.)

* 13 Ga 6. 7 Cranch 34 - 3 Wheat 449 - 108 US 32

That a deed is not recorded does not affects its validity or effect as a conveyance of title, except as to those who derive without notice title from the same feoffor by a deed of subsequent date to that under which the party claim title.

Whittington v. *Doe*, 9 Ga., 23, 29.
Roe v. *Doe*, Dudley's Rep., 170.

The deed is 48 years old, comes from proper custody and is proved to have been recorded in Thomas County within three days after it purports to have been made. Even though the record there be defective as notice, the fact of record and ancient affidavit on it is receivable as evidence of its authenticity.

Pridgen v. *Green*, 80 Ga., 737.
Gardner v. *Grannia*, 57 Ga., 555.

A deed over thirty years old, its appearance being genuine coming from proper custody, improperly recorded, the probate failing to recite delivery is admissible as an ancient deed without proof.

Thursby v. *Myers*, 57 Ga., 155.

The probate in Thomas County, June 11, 1855, *valid.*

The law in force in 1855 on registry is contained in Act February 22, 1785, and was as follows:

> "That all deeds of conveyance by way of bargain and sale, *bona fide*, of lands or tenements, and executed under hand and seal in the presence of two witnesses, and a valuable consideration paid, that are proved or acknowledged before a Justice of the Peace, &c., * * * and the said deed is registered by the clerk of the court in the county where such lands and tenements lie, in a book by him to be kept for that

purpose within twelve months from the date of such deed, &c.," shall be good and valid, &c.

Cobbs' Digest, p. 164.

The Act of February 14, 1850, allowed the "execution" before the clerk of the Superior Court and allowed the registry of a deed so executed.

Cobb's Digest, p. 181.

The Code of 1861 changed the law slightly, it allowed the deed to be admitted to record "Upon the affidavit of a subscribing witness before either of the above named officers testifying *to the execution* of the *deed and* its *attestation according to* law." "A substantial compliance with this requisition shall be held sufficient in the absence of all suspicion of fraud."

Code 1861, Sec. 2669.

Also

Code 1895, Sec. 3632.

It will be noted that none of these acts require the use of the word "deliver" in the probate. All that was required, at the time of this registry in 1855, was proof of "execution" of the deed, by a subscribing witness, before the Justice of the Peace.

Definition of a deed:

"A writing containing a contract sealed and delivered by the party thereto."

Bouvier's Law Dictionary "DEED."

2 Washburn Real Prop., 553.

2 Black Comm., 295.

"A deed is executed when it is signed, sealed and delivered."

Bouvier's Law Dic., "Execution."

The deed in the case at bar is attested "Signed, sealed and delivered" in the presence of "Samuel L. Moore," and "Samuel A. Graves." (Rec., 300.)

The only question is, whether the affidavit of Samuel A. Graves made on the deed in 1855 for probate, was couched in language sufficient to prove the fact of such signing, sealing and *delivery*, for purposes of record notice.

His probate before Torquil McAuley, J. P., is:

> "That he saw Joel S. Graves sign the within deed for the purposes therein contained and that he saw Samuel L. Moore *sign as a witness* and *signed as a witness* also himself."

It is contended by Crawford that this affidavit does not set forth the fact of delivery.

But the probater swears he signed "the within deed as a witness." Witness to what? Evidently as a witness to what the attestation clause referred to in his affidavit, which is a part of the deed, says he witnessed by his signature, viz.: the "signing, sealing and delivery."

Where the probating affidavit or acknowledgment refers back to the deed itself, that may be looked to to see what was witnessed.

The Supreme Court of the United States has decided a case almost identical with this, and in doing so the court quoted with approval the following statement of the principle involved:

> "In the present case the instrument shows a general attestation of it by three witnesses, without any statement of the particular facts they attested; but they must be understood to have attested something; and to ascertain what

that is, there is no principle of law nor any authority of which I am aware, that prohibits a reference to the instrument itself; and if we look at the instrument for information as to that which it is to be presumed the witness did attest or witness, what do we find, etc."

Ladd v. *Ladd et al.*, 8 How., 33.

"The grantor concluded the deed in the usual form: 'In witness whereof, have hereunto set my hand and seal, &c.,' adding and delivered the property by the symbolic tradition of a pen knife.

In the presence of

THEODORE GUERRY.

THOS. BIVINS, J. P."

"The conclusion of law is that the magistrate saw the instrument legally executed; that is signed, sealed and delivered."

Dinkens v. *Moore*, 17 Ga., 62.

A bill of sale was proved as follows:

"I did sign the said bill of sale *as an attesting witness.* I saw Jesse Coe execute said bill of sale to said Susannah Watts (as I supposed) for the purposes therein mentioned."

"If this statement be true, the most obvious, if not necessary inference from it is, that the witness saw the bill of sale signed *and delivered;* that he was present when it was done and *attested the doing of it.*"

Dawson v. *Callaway*, 18 Ga., 579.

Case distinguished.

Rushin v. *Ball*, 11 Ga., 636, relied on by counsel for defendants is distinguished by the facts.

While the attestation to the deed itself purported to be "signed, sealed and delivered" in the presence of *three* witnesses, the probate was by one of them only and was only as follows:

> "That he saw John Stanton sign and seal the deed, and for the purposes therein named, and that he also saw Duke Hamilton and W. A. Mott as witnesses to the same."

The affiant there expressly refrains from saying that he saw the grantor deliver the deed, and he expressly refrains from saying that he saw Hamilton and Mott *sign* as witnesses. As to them he merely says he "saw them as witnesses" to the signing and sealing.

There was absolutely no statement in the probate that this third witness signed as a witness to the deed or that he saw the other two *sign* as witnesses. In other words, there was absolutely no statement in the probate that anybody had witnessed the execution of the deed. His affidavit only went to the extent that he saw the grantor sign and seal the deed.

It would not be inconsistent with the statement in the probate, if this third witness had seen the grantor sign the deed, and not being himself present when it was acknowledged and signed before the other witnesses, he being afterwards called on to prove the deed, added his own name without ever having seen the other witnesses sign, or the delivery of it.

While in the case at bar the probater swears he *signed as a witness* and saw the other man sign as a

witness, *and the deed itself shows it was as witnesses to the signing, sealing and delivery.*

That case must be taken as limited by the later cases, 17 Ga., 62; 18 Ga., 579, and 8 How., 33, above cited.

Second Probate.

On March 30, 1889, Samuel L. Moore, the other subscribing witness, probated the Cyrus S. Graves deed of June 8, 1855, with strict formality before Wm. D. Mitchell, Judge of County Court of Thomas County, and the deed was re-recorded in Colquitt County April 2, 1889. (Rec., 301.)

First Objection.

This is attacked because it is alleged that the County Court judge had no authority. No authority for this position can be cited.

Reply.

County Court is court of record.

Code 4170, 4184, etc.

Judge of any court of record of state may take probate.

Code, Sec. 3620.

Second Objection.

That Samuel L. Moore, who made the second affidavit was not the same Samuel L. Moore who signed the deed.

Reply.

Moore's probate affidavit states (Rec., 301) he was the same and no proof is offered to the contrary.

No title of out Eli Graves, Joel S. Graves or Cyrus S. Graves is shown by any of the defendants to any of the lots unless it be the alleged deed to lot 383 from Joel S. Graves to James Read or Redd in 1852.

When this deed to Redd is shown to be a forged document, as we shall presently point out that it is, it leaves the Joel S. Graves deed to Cyrus S. Graves the first recorded, even on its second record April 2, 1889, even if the first probate be defective (which it is not), and admissible as well because of its record as because it is an ancient deed proven to be genuine.

H. T. CRAWFORD TITLE TO LOT 383.

EXHIBIT 6.

(Crawford's 1st link.)

Deed, Joel S. Graves to James Read (or Redd), dated November 2, 1852. (Witnessed by J. M. Norman, J. P.) (Offered Rec., 281; objection stated, Rec., 281; copied, Rec., 303.)

No record in Thomas County, although Colquitt County was not cut off until 1856. The alleged original has on it an illegible entry which defendant claims was an entry of registry in Colquitt County June 26, 1858. This claim is based upon the fact that a certified copy of a record of said deed made in Colquitt County December 13, 1890 (a year and a half after the Cyrus S. Graves deed of 1855 was re-

corded in Colquitt County), it is claimed, purports to record a previous record of made June 26, 1858, of said alleged deed to said Redd or Reed. This law authorizing the record of a former registry is found in Sec. 3619 Code (Act of 1882-3, p. 148); it expressly provides that it must be done within twelve months after the act or after the loss or burning up of the records (which in this case occurred in 1881) to give the re-record the effect of the former registry.

It is not disputed by us that the defendant can stand upon his old deed, and upon its old registry, if it appears upon it (which it does not, Rec., 303-304) and if the ancient deed comes from honest hands, proved as an ancient document, but he can gain nothing from the re-registry of the entry of former registry after the year is out, because the right to record the former registry is a creature of the Act of 1882 and not having been recorded within the year a certified copy of a record made in 1890 of such back registry is not evidence.

Eaton v. *Freeman*, 63 Ga., 538
Williams v. *Logan*, 32 Ga., 165.

As the record in 1890 of the deed to Redd or Read, did not comply with the burnt records Act, it stands as if that deed was recorded for the first time in 1890, and our record in 1889 of the deed of Cyrus S. Graves gives the later precedence, since lot 383 was in virgin timber until 1899, and the conflict is purely on the title.

The issue of forgery was squarely raised in this case under the equity practice as to the Read or Redd

deed. Complainants had gone much further than putting in an affidavit of belief in its being a forgery. The deed was impounded by the court at the rule *nisi* hearing, and in main case complainants put in the sworn testimony of Joel S. Norman (Rec., 267-268), and original documents showing it a forgery before it was offered in evidence by Crawford on the merits.

In such case the burden of proof was thrown upon defendant to prove the genuineness of the deed and alleged entry of record thereon claimed to have been made in 1858.

Holland v. *Carter*, 79 Ga., 139.

The strict application of practice of raising separate issues for jury trial by affidavit under Georgia practice cannot be made applicable to chancery practice of U. S. courts.

The practice is not applicable to ancient deeds even in Georgia.

McArthur v. *Morrison*, 107 Ga., 797.

THE READ OR REDD DEED A FORGERY.

This alleged ancient deed is before the court for inspection.

(a) It comes from one who traces back his title to it through a chain of deeds, two of which, to wit, the deed from James J. Read or Redd to Shumake witnessed by N. C. Munroe of Bibb County, and the deed from Shumake to Hobbs witnessed by W. T.

Thompson of Chatham County are absolutely shown (see below) to be forgeries. It (deed Joel S. Graves to Read or Redd) comes, therefore, from Crawford, through the hands of predecessors convicted of forging two other links in the same chain.

(b) The Read or Redd deed showson its face that it is not genuine. It appears to have been treated chemically. Joel S. Graves, the alleged grantor, was a highly educated man, a graduate of Yale, a Presbyterian minister and school teacher according to the evidence. (Rec., 223 and 189.)

The body of the deed and signature of the grantor appear to be in the same handwriting.

Yet we find the following mis-spelled words in it:

"Sum"	spelled	"Some"
"Mentioned"		"Mentoned"
"Other"		"Outher"
"Witnesseth"		"Witniseth"
"Consideration"		"Consederation"
"Receipt"		"Recipt"
"Hereby"		"Hearby"
"Bargained"		"Barganed"
"These"		"Thease"
"Singular"		"Singullar"
"Appurtenances"		"Appertinances"
"Title"		"Tital"
"Affixed"		"Affixt"
"Ninety"		"Ninty"
"Eighth"		"Eight."

This deed is copied in Rec., 303, but the printer has undertaken to correct the spelling of some of the words as they appear in the original, which is sent up for inspection of the court.

But this is not all, what is more remarkable is, that in deeds forming links in Crawford's chain of

title, made more than twenty years after the alleged deed to Read or Redd, the same misspelled words in the alleged deed of 1852 are misspelled in exactly the same way in the alleged deed from Read or Redd to Shumake in 1863 (N. C. Monroe, Notary Public, witness) and in the deed from Shumake to Hobbs in 1888 (W. T. Thompson, Notary Public, witness), both shown to be forgeries. (See below.)

The deed from James J. Read to Shumake (See original sent up for inspection) while mostly printed has in the script parts of it:

"Parcel"	spelled	"Parcil"
"Eighth"		"Eight"
"Ninety"		"Ninty"
"Tract"		"Track."

The deed from Shumake to Hobbs has in it: "Outher," "Recipt," "Hearby," "Barganed," "Singullar," "Appertinances," "Tital" and "Af-"fixt," "Parcil."

The writing in all three deeds constituting Crawford's 1st, 2nd and 3rd links, while slightly changed is evidently that of the same man.

(c) There is positive evidence of the forgery to the deed from Joel S. Graves to James Read or Redd. Joel S. Norman, a son of James M. Norman, the justice of the peace whose name is signed to the deed was a witness in the case and while an old man himself is a very intelligent witness. He testifies (Rec., 267-269) that the signature to the deed is not his father's, and he produces under subpoena three old justice court documents, Exhibits 55, 56 and 57. Two of them are old *fi fas* against James J. Redd, issued

in 1860 by James M. Norman, J. P., with *nulla bona* returns on them. Land in Georgia was subject to levy and sale. This was at the very time it is claimed Redd owned lot 383, because the deed out of him does not purport to be made until 1863.

The handwriting on the *fi fas,* which are proven by Joel S. Norman to be that of James M. Norman, J. P., on inspection (See original sent up) is seen to be entirely different from that on the deed.

(d) Jennie L. Graves testified (Rec., 223-224) that the signature to the deed of Joel S. Graves to Cyrus S. Graves, Exhibit 3, is in the handwriting of Joel S. Graves.

While the former may have had some writing of Joel S. Graves before him, and very likely had, there is a very marked difference in the signature to the Redd deed from the genuine, which will be seen on comparison.

(e) An ancient deed is not admissible to prove itself unless it comes from the proper custody.

> "It must appear that the instrument comes from such custody as to afford a reasonable presumption in favor of its genuineness; and that it is otherwise free from just ground of suspicion."
>
> 1 Greenleaf, Sec. 21.
>
> Ga. Code, Sec. 3610, 5244.
>
> *Long* v. *Ga. Land & Lumber Co.,* 82 Ga., 628.

If the deed to Read or Redd be excluded, the whole of Crawford's claim to lot 383 falls to the ground, since he claims no prescriptive title to that lot.

EXHIBIT 7.

(Crawford's 2nd link.)

Deed, James J. Read or Redd to Joseph H. Shewmake, dated August 6, 1863, *witnessed by N. C. Monroe,* Notary Public in Bibb County, Georgia; re-recorded December 13, 1890, in Colquitt County. (Copied, Rec., 305; offered and objection stated, Rec., 281-282.)

Deed a Forgery.

This deed is shown to be a forgery. It is shown by records of Court of Ordinary of Bibb County, successor to old Inferior Court that N. C. Monroe was not a notary at that time or before and N. C. Munroe was not appointed until April 4, 1864. Testimony of C. P. Roberts, Deputy Clerk. (Rec., 220.) Notaries were appointed exclusively by the Inferior Court up to 1868.

See Ga. Code, 1861, Sec. 1446.
Hotchkiss Stat., p. 859.
Acts 1868, p. 130.

This is absolute proof of forgery.

Denham v. *Holeman,* 30 Ga., 619.
Fain v. *Gartright,* 5 Ga., 6-11.
Williams v. *Goodall,* 60 Ga., 482.

The testimony of W. A. Huff (Rec., 218), who knew the real N. C. Munroe's signature and who produces his writing, Exhibit 33, and testimony of C. M. Wiley, who produces Munroe's will, is also to same effect. (Rec., 215-216.) They both say the young N. C. Mun-

roe was not of age at that time, and that his signature on the will is also different. Besides the signature on the deed is spelled different and as shown above there was no notary of either name at that time.

EXHIBIT 8.

(Crawford's 3rd link.)

Deed, Joseph H. Shewmake to Marshall Hobbs (copied, Rec., 305), for west half of 383, dated July 10, 1888, witnessed by W. T. Thompson, Notary, of Chatham County. Recorded Colquitt County December 13, 1890. (Offered and objection, Rec., 282.)

Deed a Forgery.

Mr. W. T. Thompson, the notary public of Chatham County, whose name is signed as witness to the deed swears that his signature is a forgery. (Rec., 148.) Mr. W. T. Thompson is a son of the late Colonel W. T. Thompson, formerly editor of Savannah Morning News. He is a business man of intelligence, and states facts showing the deed a forgery. There was no other W. T. Thompson, who was a notary for Chatham County. (Rec., 362-363 and 259.) The three deeds, Exhibits 6, 7 and 8, as already shown were written by the same person. The spelling shows it. The writing shows it.

See, also, the testimony of Samuel Hayes as to the agreement between A. T. McIntyre and Wm. McMullin, that the latter should get up the missing links and was to have half proceeds of lot (*post*, 55-57).

EXHIBIT 9.

(Crawford's 4th link.)

Deed, Jos. H. Schumake to Isaac M. Wilkes, for east half 383, dated January 7, 1891, recorded Colquitt County, January 12, 1891 (offered and objection, Rec., 282). This was recorded in Colquitt County after the second record of Cyrus S. Graves deed, there in 1889. And as no prescription is claimed on lot 383, these subsequent deeds are unimportant as title, but complainant is entitled to have them cancelled, as clouds on complainants' title.

EXHIBIT 10.

(Crawford's 5th link.)

Deed, Isaac M. Wilkes to R. G. Wilby, east half of 383, dated January 9, 1891, recorded Colquitt County, January 13, 1891 (offered and objection, Rec., 282).

EXHIBIT 11.

(Crawford's 6th link.)

Deed, Marshall Hobbs to R. G. Wilby, west half of 383, dated January, 1891, recorded Colquitt County, January 13, 1891 (offered and objection, Rec., 282).

EXHIBIT 12.

(Crawford's 7th link.)

J. Z. Elliott, receiver of Wilby to A. T. McIntyre, Jr., dated July 3, 1894, recorded July 5, 1894 (offered and objection, Rec., 282). (Copied, Rec., 308.)

See letters of McIntyre & McIntyre and A. T. McIntyre written to the Graves heirs in 1890, acknowledging their title, and undertaking to defend the same. (Rec., 326, and Rec., 234.) Also, see answer of A. T. McIntyre, Sr. (Rec., 51.)

EXHIBIT 58.

(Crawford's 8th link.)

Certified copy of order of Superior Court of Berrien County (Rec., 346), authorizing Elliott, receiver, *to sell* at public outcry *in Berrien* County certain lands.

This is offered by H. T. Crawford, defendant, to show authority in receiver to sell at public outcry in *Colquitt* County and as authority for the deed, consideration $5, from receiver to A. T. McIntyre, Jr.

The evidence is that he made sale at public outcry in Colquitt County. Testimony of Wm. McMullen (Rec., 197). The deed itself shows it, and answer McIntyre (Rec., 50) shows it. Receiver's deed without compliance with the order authorizing is not sufficient to convey title, even if the receiver's principal had title which he did not have.

EXHIBIT 13.

(Crawford's 9th link.)

Deed, Samuel L. Hayes, Admr. of A. T. McIntyre, Jr., to John McMullen, dated November 9, 1898, recorded November 14, 1898 (offered and objection, Rec., 282). (Copied, Rec., 308.) See *post* as to conspiracy and fraud of McIntyre, McMullen and Crawford.

EXHIBIT 59.

(Crawford's 10th link.)

Order of ordinary Thomas County allowing Hayes, Admr., to sell "two lots" (offered and objection, Rec., 282-283). (Copied, Rec., 348.)

EXHIBIT 14.

(Crawford's 11th link.)

Deed, John McMullen to H. T. Crawford, November 9, 1898, recorded November 14, 1898 (offered and objection, Rec., 283). (Copied, Rec., 309.)

No Prescription on Lot 383.

No attempt to set up prescription on lot 383. It was not touched even for turpentine until after the Crawford deed of 1898 and suit was brought in 1899. (Answer of Crawford, Rec., 29.) So that the case as to this lot is purely a question of record title. Two links, the second and third, in Crawford's chain of title to 383 are shown *absolutely* to be forgeries, viz.: the deeds witnessed by N. C. Munroe and W. T. Thompson.

Attempt by Crawford to Show Title in Third Person.

The defendants however claim that even if that be admitted that the deed from Joel S. Graves to Read or Redd is not shown to be a forgery and if

not, that it shows title out of Joel S. Graves into Redd by deed earlier than the deed of Joel S. Graves to Cyrus S. Graves and that we must recover on the strength of our own title.

We say we have established the forgery of the deed of Joel S. Graves to Redd *overwhelmingly*. But if that were in doubt, yet since we have shown the deed out of Read or Redd to Shumake to be a forgery it would leave in James J. Redd whatever title there was under the deed to Read or Redd.

JAMES J. REDD'S DISCLAIMER.

James J. Redd, according to all the testimony, was the person intended to be claimed under by Crawford in the alleged deed.

Testimony of Merrill for defense (Rec., 140) and (Rec., 184, 214).

There was no James Read at that time known in the county, but James Redd lived there and was a laborer for Joel S. Graves, and left there during the war when he went into the confederate service, and did not return.

Testimony of McMullen for defense (Rec., 189-190.) Mrs. Jennie L. Graves knew James Redd as a wagon driver for Joel S. Graves about 1859 or 1860. (Rec., 237.)

After the above testimony was taken, James J. Redd was traced as having moved from Colquitt County to Macon County, Ga., about 1862, and to be still living in Macon County. He died before his testimony could be taken, but before he died he made

a written statement (Rec., 213) denying that he had ever received a deed or made a deed to said lot. Exhibit 32. Testimony of Callaway (Rec., 212), Della Coogle, stepdaughter of Redd (Rec., 204), Lizzie Jones, daughter of Redd (Rec., 207).

This evidence would not be admissible against a title shown in H. T. Crawford. But where the defendant relies solely upon showing title not in himself, but title in Redd, a third person, the latter's statement while in life is admissible to show that there was not then and never was title in him.

> "The admissions of a party against his interest, as to property in his possession or to which he claims title are competent evidence; and they are good as to those who claim under the declarent, whether he were in actual possession or held the paramount title, at the time they were made or not."
>
> *Ward* v. *McGuire*, 17 Ga., 303.

The case is much stronger where a third person, a mere trespasser, seeks to set up title in such a person so disclaiming, and showing no title in themselves.

> "Even were she not privy in law with him, this evidence was admissible under the rule that self-disserving declarations made by a deceased person having peculiar opportunities to know the truth as to the matter under investigation may be proved even in cases between third parties, none of whom claim under or through him."
>
> *Ga. R. R. Co.* v. *Fitzgerald*, 108 Ga., 509.
>
> *Field* v. *Bounton*, 33 Ga., 239.
>
> 1 Greenleaf, Evidence, Sec. 147.

CRAWFORD'S TITLE TO SOUTH HALF OF LOT 353.

EXHIBIT 22.

(Crawford's 1st link.)

Deed, P. S. Bower to M. M. Blanton, *undivided* half 353, dated November 14, 1893 (scratched over and made 1892). Recorded Colquitt County, December 5, 1893. Offered (Rec., 254; copied Rec., 316); objection for antedating, alteration apparent on face (Rec., 284) and shown to have been a subsequent alteration by testimony of the grantee (Rec., 273).

The bill was filed April 29, 1899 (Rec., 17), and therefore whether Crawford's 1st link to lot 353 commenced in 1892 or 1893 it was filed in time to prevent Crawford from effectively claiming prescription of seven years' possession under color of said deed. No conveyance to Bower is shown.

EXHIBIT 21.

(Crawford's 2nd link.)

Deed, M. M. Blanton to H. H. Autrey, south half of 353, dated November 30, 1893, recorded Colquitt County, December 5, 1893 (offered and objections, Rec., 284). Copied (Rec., 315).

EXHIBIT 20.

(Crawford's 3rd link.)

Deed, C. H. Autrey to D. A. Autrey, south half of 353, dated February 2, 1894, one witness T. D.

Dougherty. Recorded defectively February 17, 1894 (offered and objection, Rec., 284). Copied (Rec., 315).

EXHIBIT 19.

(Crawford's 4th link.)

Deed, D. A. Autrey to D. M. Reeves, south half of 353, dated July 26, 1895. Recorded July 27, 1895 (offer and objections, Rec., 284). Copied (Rec., 314).

EXHIBIT 18.

(Crawford's 5th link.)

Deed, D. M. Reeves to H. T. Crawford, south half 353, dated December 1, 1897. Copied (Rec., 313). Recorded December 27, 1897 (offer and objections, Rec., 284).

Crawford does not claim south half of 353 under the deed, Exhibit 66, offered Rec., 295, from Rebecca Bruce and W. W. Bruce to Elizabeth Bruce, December 26, 1854, for one half undivided interest in 353. That was Ashburn's chain. The earliest deed on which Crawford can attempt to prescribe is the P. S. Bower deed of November 14, 1893. This suit was filed April 29, 1899, and therefore the seven years' prescription has not run.

No deed to Bower is shown. In Georgia the seven-year prescription must be on written evidence of title.

Baird v. *Evans*, 58 Ga., 354.
Code, Sec. 5389.
Burdell v. *Blain*, 66 Ga., 169.

The deed from Bruce to Bruce could not be color of title to Crawford to south half which is not claimed by him under it.

White v. *Rowland,* 67 Ga., 546.

Possession to make prescription run as color, must be under *written* evidence of title, parol evidence as to who was purchaser as foundation for color not admissible.

Baird v. *Evans,* 58 Ga., 351.

The possessor must claim in his own right and not in right of another.

Ga. Code, Sec. 3584.

> "The deed not having been made to Troy, and never having been in his possession, could not have been color of title in him."
>
> *Acme Brewing Co.* v. *C. R.,* 115 Ga., 504.

The first written evidence of title shown by Crawford to the south half of 353 is the deed from Bower to Blanton, November 14, 1893, which has the date written over and falsely made 1892 as testified to by Blanton.

This alteration in the date could have been for no other purpose, than to fraudulently gain a year in the time for prescribing. The first clearing and the putting up of the still on south half of 353 was after 1893. Testimony of J. F. Cooper for defense (Rec., 160). Therefore Crawford had neither title nor prescription under color of title for seven years.

Code, Ga. (1895), Sec. 3589 (*supra*).

THE ALLEGED DEED FROM CYRUS S. GRAVES TO ABRAM GRAVES.

Counsel of defendants stated (Rec., 179) that they expected to prove a deed from Cyrus S. Graves to Abram Graves and deed from Abram Graves to Bruce and Bower and a partition between Bruce and Bower. They wholly failed to offer or produce any such deeds, or partition.

They attempted to prove solely by parol testimony of E. O. Thompson a deed from Cyrus S. Graves to Abram Graves, his father, and a deed from E. O. Thompson, administrator of Abram Graves to Bruce and Bower, without being able to describe the lot conveyed, the dates, the witnesses or the consideration. (Rec., 153, 157, 158.)

The effort to prove such deeds by oral testimony of E. O. Thompson wholly failed. He did not prove the existence of the deeds, their execution according to law, or attempt to account for the originals, or know or describe any particular lot.

The original deed must not only be shown to have existed but it must be shown to have been properly executed before oral testimony as to its contents can be admitted.

Dasher v. *Ellis,* 102 Ga., 830.
Garbutt v. *Gress,* 111 Ga., 821.
Calhoun v. *Calhoun,* 81 Ga., 93.

The evidence must show that it is not in the possession of the persons who are the natural custodians of it.

Acme Brewing Co. v. *C. R.,* 115 Ga., 503.
Lott & Perkins v. *Buck,* 113 Ga., 640.

Thompson testified that the lot he did sell as administrator of Abram Graves to Bruce & Bower he gave the deed to them. No attempt is made to account for the alleged original. Thompson could not tell which or what lot he sold. If he sold any it may not have been any of these in controversy. Besides, no deed from Cyrus S. Graves (in whom we show title to said lot 353) to Abram Graves is offered or proved.

An attempt was made to set up estoppel on Mrs. Graves and daughters for receiving a small pittance from E. O. Thompson, administrator of Abram Graves, in settlement of the claims of herself and daughters on their grandmother's estate. (Rec., 252.)

But they failed to show that any part of it came from a sale by the administrator of lot 353. Defendants' Exhibit 53 (Rec., 343) the return of E. O. Thompson, administrator of Abram Graves only shows that he charged himself, July 4, 1870, to July 4, 1871.

> "To amount received from sale of wild lands in Colquitt County, being first payment and one half of purchase month $37.50."

There is nothing to connect that sale of Abram Graves' land with lot 353 which belonged to Cyrus S. Graves.

Mrs Graves testified she never heard of any claim that there was a deed from Cyrus S. Graves to Abram Graves until 1899. just preceding the filing of the bill in this case (Rec 232).
There is no evidence that Abram Graves or E.O. Thompson as Admr of Abram Graves, or Bruce & Bow or Elizabeth Bruce or any of the alleged predecess in title of Ashburn ever paid taxes on lot 353. E. O. Thompson testified that the lot he sold as Admr. was one which had been conveyed by deed from Abram to Cyr and by the latter reconveyed. (Rec 156) Thinks it was 224 or 324 (Rec 159).

THE INTERLINEATION "SOLD TO DR. BOWER" IN DEED EXHIBIT 3.

In the deed of June 8, 1855, from Joel S. Graves to Cyrus S. Graves, there now appears interlined after the figures "353" descriptive of one of the lots, the words "Sold to Dr. Bower." That interlineation was not in it when the deed was recorded in Thomas County June 11, 1855, as shown by the record. (Rec., 131-132.) It is now contended by the defense that this interlineation was put on there by E. O. Thompson, administrator of Abram Graves, while he had possession of the deed, for the purpose of returning the property for taxes as agent for Jennie L. Graves and daughters, as heirs of Cyrus S. Graves

Mrs. Jennie L. Graves testified that she received the deed from her husband at the time of his death in 1862, she then went north and left it with E. O. Thompson, her husband's brother-in-law, for the purpose of having him look after the taxes. (Rec., 248-249.)

She further testified that when she visited Georgia in 1889, and employed McIntyre and McIntyre, attorneys, of Thomasville, to bring certain trespass suits against a man named Norman, about one of the lots not in controversy here (Rec., 224), she got the deed from Thompson and turned it over to Col. A. T. McIntyre or Thompson turned it over. (Rec., 247.)

She testified that in 1899 she got the deed and plats and grants, which had in the meantime been placed in Col. McIntyre's hands, from him, and

turned them over to Mr. Erwin for the purpose of the present suit (Rec., 225-226.)

That she did not see the interlineation when she turned the deed over to Col. McIntyre, and is positive she would have noticed it if there then. (Rec., 225.) The first time she saw it was when she took the papers to Mr. Erwin in 1899 and when he opened the papers he called her attention to the interlineation "Sold to Dr. Bower." (Rec., 226.)

E. O. Thompson was put upon the stand by the defendants. It appears they, the Graves and Thompson, had a family rupture growing out of the settlement or want of settlement of the Abram Graves estate (Rec., 252), but never once did the defendants attempt to prove by Thompson while they had him on the witness stand that he had interlined those words.

After E. O. Thompson's death C. P. Hansell was put upon the stand by the defendants and an attempt made to prove that the words "Sold to Dr. Bower" were in E. O. Thompson's handwriting. His testimony was (Rec., 260):

> "It is such a small quantity I cannot be certain about it as I would if it was more, but the 'Dr. Bower' part of it is, in my judgment, strictly his handwriting."

Mrs. Graves testifies she did not know who did it (Rec., 248).

If, however, that notation was put upon the deed by E. O. Thompson, while he held it for purpose of returning the lands for taxes, and that is what he states his agency consisted in (Rec., 158), no

declaration made by him outside of the scope of his agency could operate to convey title out of Cyrus S. Graves' heirs, especially where he attempted to enter on the Cyrus S. Graves deed a sale alleged to have been made by himself as administrator of a third person. (*ante* p. 73)

When an agent acts adversely to the interest of his principal, and outside the scope of his authority, the principal is not bound:

Moores v. *Citizens Bank,* 111 U. S., 156-164.
Thomson-Houston Co. v. *Elec. Co.,* 56 F. R., 852.

An agent authorized to sell land, who sells the land and makes a deed in his own name, cannot convey away the title of his principal, and the latter can recover.

Compton v. *Cassader,* 32 Ga., 434.

See, also,

49 Ga., 563.
47 Ga., 586.

Alleged Estoppel as to Lot 353 by Alleged Failure of Administratrix to Inventory.

It is contended by Ashburn and Crawford that the heirs at law of Cyrus S. Graves are estopped from setting up title to lot 353, because in the inventory filed in 1862 by Mrs. Graves as administratrix of Cyrus S. Graves (Rec., 383) she failed to include lot 353, but did include lots 354, 383, 384 and 437.

If anything were to be taken from this fact the presumption would be just as strong, and the estoppel would be just as much against those (Crawford and Ashburn) claiming under an alleged purchase from E. O. Thompson, administrator of Abram Graves, because he too failed to return lot 353 in his inventory of Abram Graves' estate, filed November 25, 1865. (Rec., 359-361.)

But it also appears that Mrs. Graves in the distress of the civil war which sent her to her former home north, hurriedly through the lines after the death of her husband, did not include another lot of the six lots conveyed to Cyrus S. Graves, to wit, lot 345, in the same 8th District of Colquitt County. E. O. Thompson, witness for defense, accounts for the omission of one lot in Mrs. Graves return of 1862, by the discovery of the fact later that it had been hypothecated and afterward released before Cyrus S. Graves' death, but the fact had been overlooked at the time of inventory of 1862. He does not testify which lot that was. (Rec., 158.)

Mrs. Jennie L. Graves testified that she always thought of the lots as one tract and not separately. (Rec., 247.) E. O. Thompson and the McIntyres acted for her in making tax returns, if they either by fraud or mistake failed to return lot 353 for taxes, it could not affect the title of the heirs unless there had been a tax sale, which is not claimed.

Plaintiff's title cannot be defeated by proof that the land was not inventoried as part of the estate or that there had been an omission to pay taxes.

Bulloch v. *Dunbar*, 114 Ga., 758.

Nor can a contestant of Pff's title pay taxes and make such payment a charge against Pff. Iowa Homestead Co vs Des Moines N Co 17 Wall 153.

Alleged Estoppel Because of Affidavit of Mrs. Graves of January, 1899.

It is contended by defendants Ashburn and Crawford that the affidavit (Rec., 310 and 311), made by Jennie L. Graves, and her two daughters, January 10, 1899, for use in suit in Superior Court of Colquitt County, to enjoin the McMullin judgment in attachment levied on lot 354, was a disclaimer of title to lot 353.

An examination of the grounds of McMullin's attachment (Rec., 14) will show that his charge for services is stated as follows:

> "To general services rendered for attending to returning lots of land Nos. 383, 384, 354, 345, 437, and guarding against trespasses for 12 years, $600."

No claim was made by McMullin for services as to lot 353 (McIntyre had sold as his own half of lot 353 to W. W. Ashburn in 1890, shortly after the Graves title deeds to that lot was put in his hands). There can be no doubt that at the time McMullin levied this attachment he and McIntyre were making common cause against the Graves heirs. (See *post.*) McMullin obtained his judgment by attachment on lot 354. (Rec., 13.)

It will be seen, therefore, that neither in the claim made by McMullin for services, nor in the attachment levied, was lot 353 involved, nor was Mrs. Jennie L. Graves interested (except as warrantor) in any of the lots concerned in the McMullin suit,

she having conveyed her title thereto to her daughters by deed March 30, 1889. (Rec., 339.)

Mrs. Graves in the affidavit referred to says:

> "that she and her two daughters are the only heirs at law of Cyrus S. Graves, and that as such she had an interest in certain lands in Colquitt County, but that some time since she conveyed all her interest in said lands to her two daughters."

Read in the light of these facts, the statement in the affidavits will be seen to be true as to the "certain" indefinitely mentioned lands, if "certain lands" be construed to apply to all the lands concerned in the McMullin suit, to which alone the minds of the affiants must have been directed.* While lot 353 was not concerned in that suit, it may well be that Mrs. Graves' mind was not concerned with that lot at that time, because she says she thought she had conveyed that also to her daughters. (Rec., 246.)

However that may be, the defendants, Ashburn and Crawford were not misled to their injury by anything said in those affidavits made January 10, 1899, to use in the McMullin suit. Because their rights, if they have any, to lot 353, are claimed as originating long prior thereto, and they were not parties to that injunction suit against McMullin, at that time, intended to be prosecuted in the Superior Court of Colquitt County but abandoned.

> "An estoppel *in pais* operates only in favor of a person who has been misled to his injury, and he only can set it up."
>
> *Ketchum* v. *Duncan*, 96 U. S., 659.

* Mrs Graves testified she so understood the purport of the affidavit at the time. (Rec 229).

"No person can rely upon an estoppel growing out of a transaction to which he was not a party or privy and which in no manner touches his rights. There is in such case no mutuality which is a requite to all estoppel."

Deery v. *Cray*, 5 Wall., 795.

W. W. ASHBURN'S TITLE TO NORTH HALF OF 353.

As a basis for title Ashburn's counsel stated (Rec., 227) that his claim is made under title from Cyrus Graves to Abram Graves, and from Thompson, administrator, to Bower and Bruce. But we have just seen there is no legal evidence of any such conveyances.

Where Ashburn's Claim of Title Starts.

EXHIBIT 66.

(Ashburn's 1st link.)

Certified copy of deed, Rebecca and W. W. Bruce to Elizabeth S. Bruce, for undivided half interest in lot 353, dated December 26, 1884, recorded in Thomas County, but the clerk's certificate (Rec., 358) fails to state the date when it was recorded. However, since Colquitt County was cut off from Thomas in 1856, and the deed is dated 1884, the record in Thomas County, whenever made, was worthless. It was not recorded in Colquitt County at all. It stands as an unrecorded deed. It was offered (Rec., 295) and copied (Rec., 356).

There is no testimony that Ashburn ever saw the original or certified copy of that deed or ever claimed under it. See testimony of Ashburn (Rec 285 to 293). It could not have been color of title in him. Rome Brewing Co vs C.R. 115 Ga 504

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EXHIBIT 23.

(Ashburn's 2nd link.)

~~Certified copy~~ Deed Betty Bruce Daniel to A. M. Watson, dated June 30, 1890, north half of 353.

"H. Garbonati" judge of County Court, signed in Thomas County, Georgia, as a witness to the deed executed June 30, 1890, in Thomas County, Georgia, and ten days later, July 10, 1890, he gives a certificate in Colorado, that he is judge and clerk of the County Court of La Plata County, Colorado. Upon this certificate and no other the deed was recorded in Colquitt County, Georgia, November 19, 1890. There is no law in Georgia authorizing the record of a deed, acknowledged or attested by any officer acting at the time of taking the acknowledgment, outside of the territorial jurisdiction of such officer. A deed so defectively admitted to record stands as if not recorded, and is not admissible in evidence.

Allgood v. *State,* 87 Ga., 672.

Offer and objection (Rec., 283); copied (Rec., 317).

EXHIBIT 24.

(Ashburn's 3rd link.)

Deed, A. T. McIntyre, Jr., and A. M. Watson to W. W. Ashburn, dated November 5, 1890 (offered and objection, Rec., 283), recorded December 10, 1890. Copied (Rec., 318). Undivided half of 353.

The deed from Joel S. Graves to Cyrus S. Graves (Rec., 300) embraced lot 353. That deed was placed by Mrs. Jennie L. Graves in 1889 in the hands of

McIntyre & McIntyre to be used in protecting the title of herself and daughters to those lands. (Rec., 247.) And see letters of June 18, 1890, and June 23, 1890, of the McIntyres, saying: "I believe that they will get up some kind of title to every lot you have and before you know it, turpentine the land, and in the meantime I will keep them off, and use every instrumentality known to the law to keep them off." (Rec., 326.)

No Prescription.

No attempt was made by Ashburn to prove adverse possession, except on 4½ acres in northeast corner. See plat made by C. L. Austin May 30, 1899 (Rec., 298).

Testimony of Surveyor Austin (Rec., 94, 95, 98).

Testimony of County Surveyor Tucker (Rec., 99, 100, 101).

No deed back of Exhibit 66 is offered in evidence by defendants and that is not recorded in Colquitt County at all. Nor is it shown that Ashburn ever had that alleged deed in his possession or ever saw it.

Unless a small clearing of 4½ acres on the extreme northeast corner of this lot which was put there by a tenant of the adjoining lot 352 by mistake as to the lines (Rec., 100-101 and 105-106) can be considered as possession, and constructive notice, there

never was any actual possession by anybody of the north half of 353 until this suit was filed.

The north half of 353 was turpentined by or under Ashburn commencing about four years prior to this suit. (Rec., 95.) The timber was cut on it by Crawford under a transfer by Hightower and Union Lumber Company under lease from Ashburn since this suit was filed. (See deed Ashburn to Union Lumber Company January 3, 1899, Rec., 363, and deed Union Lumber Company to Crawford & Corbett, October 31, 1900, Rec., 354.)

Such small possession of 4½ acres on a 500 acre lot is not notorious. It took a county surveyor to convince even for a time the tenant on it that he was on lot 353, and he even repudiated it and claimed it as part of 352 not 353. (Rec., 101) and (Rec., 105).

Small possession in corner of lot not color of title.

Royal v. *Lisle*, 15 Ga., 545.
Griffin v. *Sketoe*, 30 Ga., 304.

It is not notice to the owner.

Denham v. *Holeman*, 26 Ga., 183-191.
Jowiscul vs Little 109 US 504

Moreover even as to the 4½ acres of 353 occupied or cultivated first by Haney and then by McCraine under their claim that it was part of lot 352 owned by them, their occupancy was not under color of the deed from McIntyre and Watson to Ashburn, and therefore Ashburn can take nothing from that. There was no actual adverse occupancy for 20 years, or seven years' occupancy of a substantial

part claiming continuously under the deed set up as color.

Possessor must claim in his own right and not in right of another.

Ga. Code (1905), Sec., 3584.

Where there is not possession of a sufficient part to give notice the deed cannot be color until recorded.

Tritt v. *Roberts*, 64 Ga., 157-158.

Burden of proof is upon prescriber.

McCullough v. *Ry.*, 97 Ga., 373.

Denham v. *Holeman*, 30 Ga., 619.

Where plaintiff makes out *prima facie* case of title, defendant cannot defeat it by showing that plaintiff did not pay taxes on it, nor that the administrator did not return it, nor that defendant paid the taxes.

Bullock v. *Dunbar*, 114 Ga., 758.

And see

Iowa Homestead Co v De Moines A Co 17 Wall 153-166

urrents of the bill are that the complts paid all taxes accrued on the ds since 1889 (Rec 6) Prior to that time E.O. Thompson attended payment of taxes for Mrs Graves (Rec 158).

is no evidence that Ashburn paid taxes except for 1898 (Rec 346)

Objection (Rec 281)

THE CONSPIRACY BETWEEN THE McINTYRES, WM. McMULLIN, W. T. CRAWFORD AND W. W. ASHBURN TO DEFRAUD COMPLAINANTS.

(1) We have already pointed out the evidence showing the relations which commenced between complainants in 1889 and the McIntyres as attorneys, and Wm. McMullin as agent in keeping trespassers off the land. And the fact that the com-

plainants' title deeds and plats and grants were put in the McIntyres' hands.

(2) It now appears (Rec., 318) that on Nov. 5, 1890, while sustaining that relationship A. T. McIntyre, Jr., joined in conveying a half interest in lot 353 to W. W. Ashburn along with a vast number of other lots. Ashburn admits that he had not even caused the records of Colquitt County to be examined to see whether the title was good or not before he purchased. (Rec., 289.) Honest men or men who do not purposely shut their eyes do not do business that way. *

On July 3, 1894, A. T. McIntyre, Jr., found that Elliott, Receiver of R. G. Wilby was about to sell lot 383 at public sale as Wilby's property. McIntyre announced that the property belong to the Graves heirs and bought in the lot for $5, by thus shutting off other bidders. (Answer A. T. McIntyre, Sr. (Rec., 51), and testimony of Wm. McMullin, Rec., 198.) A. T. McIntyre, Jr., took the deed from Elliott, Receiver, to himself in his own name. (See Deed Rec., 308.)

(3) On August 20, 1895, Wm. McMullin writes complainants offering them $3 per acre for lots 383 and 354, equivalent to nearly $3,000 for the two lots. (Rec., 320.)

The offer is declined.

(4) H. T. Crawford writes them trying to buy from them either lot 383 or 354. (Rec., 169.)

(5) On July 11, 1897, A. T. McIntyre, Jr., died and Samuel Hayes was appointed administrator of his estate.

* This was culpable negligence charging him with actual notice of the Graves title of record.
Simmons C@ Co vs Doran 142 US 417-439-440
In this omnibus deed Ashburn apparently got a number of lots belonging to other people. See Kilgore vs Norman 119 F.R. 1007.

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(6) Samuel Hayes testified (Rec., 151):

"Q. Mr. Hayes, before you made this deed and made this sale of this property as administrator of A. T. McIntyre, Jr., did you see Mr. H. T. Crawford and Mr. John McMullin and Colonel A. T. McIntyre together conferring about the sale?

A. Yes sir.

Q. Now, state what conversation occurred in reference to selling this lot of land at the price of $500 between you, John McMullin and Colonel McIntyre?

A. Colonel McIntyre sent for me to come to his office, and he, Mr. McMullin and Mr. Crawford, as I recall, were there, and he told me that he had found among some papers there a deed to a certain lot of land to A. T. McIntyre, Jr. The deed as I remember was from Elliott, Trustee of R. G. Wilby, and the consideration expressed in the deed was $5, and he told me that he could sell A. T. McIntyre's half interest in the deed or in the land for $500, and told me he thought I had better accept the money. Colonel McIntyre, I will state, was attorney for A. T. McIntyre, Jr., and I was administrator and acted under his advice.

Q. What did he say about who owned the other half interest and who was to get the other part or any part of the payment for the lot?

A. He said McMullin, I think he referred to the elder McMullin (William); I do not know whether he referred to John or to the old man, but he said that the understanding was, that Tom—A. T. McIntyre, Jr.—had a half interest in it, and this other man, *McMullin, was to get up deeds and titles and was to receive half the money when it was sold.*

Q. But the title was in whom?

A. A. T. McIntyre, Jr.

Q. And the other half interest was to go to McMullin?

A. Yes sir.

Q. For getting up the title previous to the receiver?

A. The chain of title to make it complete.

Q. John McMullin and H. T. Crawford were the men that were there?

A. Yes sir.

Q. Acting under his advice you made the sale?

A. Yes sir.

Q. And the money, $1,500, was paid through this check as you have testified?

A. Yes sir."

(Rec., 192):

"Q. Now this check ($1,500) which you have exhibited, sight draft (of Crawford) on Savannah, that money was paid or supposed to be paid to John McMullin?

A. Yes sir.

Q. With the exception of $505?

A. Yes sir."

Joseph H. Merrill, an attorney of Thomasville, Thomas County, a witness for the defense, testified (Rec., 139) that H. T. Crawford brought the chain of title to lot 383 to his office for him to examine Nov. 10, 1898, stating he wanted to buy the lot. The chain submitted was the one through Jas. J. Redd, Shumate, etc., down to Elliott, Receiver, and A. T. McIntyre, Jr., Hayes, Admr., and John McMullin made that day. He gave Crawford a certificate that the title was complete "though we have made no examination of Colquitt County records for liens."

Merrill testified he put that in the certificate to let Crawford understand that the records of Colquitt County would have to be examined to show that the title was clear, and he had not done that. (Rec.,

139-140.) Yet Crawford bought on the same day without having such examination made, which if made would have put him on notice of the Graves title under deed to Cyrus S. Graves.

Mr. Merrill further testified (Rec., 178):

"Q. Do you remember what he (Crawford) did pay you?

A. Yes; I think it was $10. I am pretty clear it was. I would like to state this Mr. Crawford came down with the McMullins. He arranged that day to get the land from the McIntyre estate and that he wanted that paper specially to send to Savannah with a draft to the people from whom he was getting the money to pay for the land.

Q. Well, now, then he came down with the McMullins, you mean John McMullin and William McMullin?

A. Yes, the old one is named William, I think.

Q. The father of John?

A. Yes, that is right."

The interposition of the intermediate deed by which Hayes, administrator, conveyed to John McMullen, and the latter then conveyed to Crawford, does not eliminate the fraud. The whole was consummated on the same day and as a part of one transaction. It is additional evidence of fraud. John McMullen was the son of William McMullen, and had helped his father get the original plots and grants from Spencer Graves, the son of Joel, for the Graves heirs. (Testimony of Wm. McMullen, Rec., 117-118.) and 197.

We see, therefore, that so much of Colonel McIntyre's answer (Rec., 51-52) as states that Wm. McMullin brought H. T. Crawford to him to buy lot

383 from the A. T. McIntyre estate is fully sustained by the evidence. That Crawford knew of the Graves title is also shown by the fact that before he bought this bogus title to lot 383 he was already on the south half of lot 353 and was claiming it (Rec., 179) as he now says under the deed from Joel S. Graves to Cyrus S. Graves, which conveyed lots 353, 354, 383 and 384. Also by his efforts to buy either lot 383 or 354 from complainants.

Wm. McMullin's Further Conduct.

Although Wm. McMullin's letter to Mrs. Graves of April 13, 1895 (Rec., 320), fully corroborates Mrs. Graves' testimony (Rec., 227) that he had undertaken because of her past kindness to him to look after her lots without charge, on June 6, 1898 (prior to the deed of November 9th, 1898, of lot 383 to Crawford), McMullin levied this attachment on lot 354 for services claimed to have been rendered about lots 383, 384, 354, 345 and 437 for 12 years up to February 10, 1898, for $653 on the ground of non-residence of defendants. (Rec., 12 and 317.)

He admits he did not notify the Graves that he had quit representing them but claims he notified McIntyre a few days before he levied his attachment (Rec., 193) and he made no demand for compensation. This was gross fraud.

Mc Mullin stated he had levied the attachment under the advice of A. T. McIntyre Sr. (Rec 230

W. W. Ashburn's Further Conduct.

On March 7, 1899, W. W. Ashburn wrote a letter to Mrs. Graves offering $2,450 for lot 354 (Rec., 341 and 258), which was refused.

Comparing this with the $1,500 Crawford paid to the McIntyres and McMullins for lot 383, and that too without having the titles examined on the records of Colquitt County, and it will show that Crawford must have known he was buying a bad title, and taking the chances of despoiling the timber before he could be stopped.

Taking now the subsequent conduct and collusion between Crawford and Ashburn pending the trial in despoiling the timber on lots 353 and 383 pending the trial and even in violation of injunction, and the fact that they were holding lot 353 as tenants in common, but under oral understanding of a division into north and south halves, and there can be little question as to the fact, that the McIntyres, Crawford, Ashburn and McMullin deliberately set to work to despoil and divide up these lots belonging to these helpless ladies residing in New York. Ashburn admits that when he bought from McIntyre & Watson the great block of lots included in the deed of November 5, 1890, which included an undivided interest in lot 353 (Rec., 318), he merely had his lawyer, Mr. Pope, examine the papers submitted to him at Thomasville and made no examination of the records of Colquitt County. (Rec., 289.)

Crawford did the same when he purchased lot 383 from Hayes, administrator of A. T. McIntyre, and

John McMullin. That these men would have consummated such transactions in good faith, without having the record titles examined, is incredible. They expected to get away with the turpentine and timber before they were caught up with by the true owners and simply took the chances.

NOTE:—There are certain affidavits in the record, pages 366 to 383, which were brought up on the appeal of Ashburn to show what was before the Circuit Court in addition to the documentary evidence on the hearing in 1899 on hearing of rule *nisi* for injunction. They have no proper right in the record, save to show the state of the record at that time. The testimony on the merits was taken as the record shows before an examiner on examination and cross-examination.

THE RELIEF ASKED.

The complainants are equally entitled to have the fraudulent deeds, constituting these chains of title of W. W. Ashburn and H. T. Crawford to lots 353 and 383, which are now in court, established to be fraudulent by proper decree, and entered cancelled to prevent their being taken away and being made the basis of other fraudulent changes of title, which may again be made adversely to the complainants. The injunctions against John W. Hightower, The Union Lumber Company and Wm. McMullin decreed by the Circuit Court (Rec., 89) was not disturbed by the Court of Appeals.

The complainants are also entitled to have a permanent injunction enjoining the defendants Crawford and Ashburn and those claiming under them from further interfering with said four lots of land, 353, 354, 383 and 384, and the timber and turpentine privileges on the same.

Complainants are enttiled to an accounting for the valuable products taken off said land by defendants.

The complainants are entitled to have a decree for the value of the turpentine and timber taken from the lands by the several defendants, whether taken by them directly, or taken by them through leases and conveyances to other people. The complainants proved, when testimony was taken in this case in May, 1900, the preceding and then value of the turpentine and timber *privileges* on the average lot situated such as those covered in this suit.

The costs awarded against the complainants by the Circuit Court (Rec 90) and by the Circuit Court of Appeals (Rec 416-417) should not have been so awarded, and in that respect the said decrees should be reversed and the same awarded against Ashburn and Crawford.

Value Per Acre of Land for Turpentine and Timber Privileges.

John F. Pidcock, President of the Georgia Northern Railroad, living at Moultrie, Ga., very near the lands, and having been engaged in the lumber and turpentine business in that section, testified (Rec., 107) that the turpentine privileges had for several years been worth three dollars an acre for the privilege of turpentining for three years, which was the usual time; and that the timber privileges after the

turpentine had been extracted were worth three dollars to three dollars and a half per acre in that neighborhood; and that the lands were worth about four to five dollars per acre, and that there were very fair values. The testimony is that these lots are right on two railroads.

C. W. Pidcock (Rec., 110) put the valuation of the turpentine privileges at from two to three dollars, and the timber privileges after the turpentine had been extracted at four dollars per acre. These were the most disinterested witnesses that were produced on the subject of the average value of turpentine and timber privileges in that locality.

The defendants produced one or two witnesses as to values who were interested in buying up lands at the time, and who were shown to be defendants in similar litigation to that in this case; such witnesses were Hawkins, Cooper and J. B. Norman, Jr., whose testimony must be weighed in the light of their interests. Cooper obtained the Bower deed to Blanton, which is shown to be fraudulently altered. (Rec., 128 and 316, 273.)

The Circuit Court fixed the value of the turpentine privileges at $2.75 per acre, and timber privileges (after the extraction of the turpentine) at $4 per acre. (Rec., 89.)

It is a fact, however, which complainants would like to establish by evidence, that subsequent to the taking of evidence and pending suit such timber lands rose in value to $20 and $30 per acre.

Products Taken from the North Half of Lot 353.

Item (1) The Circuit Court (Rec., 89) gave complainants a decree against W. W. Ashburn for $739.75 for the value of the *turpentine* taken off prior to the suit by or under Ashburn, from the north half of lot 353, allowing $2.75 per acre for 269 acres.

The acreage and condition of the trees was fixed by plat of survey by Austin May 5, 1899 (Rec., 298), and testimony (Rec., 95), of Austin as to when (about four years prior to May 30, 1899) the trees were boxed for turpentine. It was being turpentined in 1899, and within the two or three preceding years. (Testimony of Crawford for defense, Rec., 175.)

J. F. Cooper, for defense, testified Ashburn's turpentine still was put up on lot 353 in 1892 or 1893 and they (Ashburn and Crawford) had been in possession ever since (Rec., 127). Ashburn admits it was turpentined by or under him (Rec., 288). We insist the Circuit Court was right in the above awards.

Defendants' counsel insist that there can be no recovery for these products taken by Ashburn, because they claim it was not sued for within the four years prescribed by Sec. 3879 of the Code of Georgia. But the proof above referred to shows the products were taken within the three years just preceding the filing of the bill.

Item (2) The Circuit Court (Rec., 89) gave complainants a decree against W. W. Ashburn, John W. Hightower and the Union Lumber Company for $1,076 for the value of the *timber* cut and taken away by or under them pending the suit (and while they were under injunction) from the north half of lot 353, allowing 269 acres of timber at $4 per acre.

See lease January 23, 1899 (Rec., 363), from W. W. Ashburn to Union Lumber Company, Hightower, etc., for timber on 100 acres and 268 acres of lot 353. Also lease October 31, 1900 (Rec., 354), from Union Lumber Company to R. J. Corbett and H. T. Crawford for timber on 265 acres of lot 353. They were enjoined from boxing or cutting timber on May 12, 1899 (Rec., 38). The timber was cut off pending the suit by the lessees while the suit was pending (Rec., 296).

Ashburn claims that he did not *positively* know this was being done by his lessees (Rec., 290). He was, however, defending in this suit his lease to them, and he cannot escape civil liability for acts done by them under it. They and he were jointly and severally liable.

Sessions v. *Johnson*, 95 U. S., 347.

We insist the Circuit Court was right in the above award.

Products Taken Pending Suit from Lot 383.

The bill was filed April 29, 1899. Crawford boxed the trees in 1899 on the whole of lot 383 about three months prior to the filing of the bill (Rec., 94-173). Crawford, pending suit, leased (August 28, 1899) the turpentine privileges for balance of year 1900 and 1901 on lot 383, being "28,000 virgin boxes," to W. W. Ashburn and Z. D. Clark (Rec., 351), and testimony of Crawford (Rec., 173) and Ashburn thereafter turpentined that lot for three years until some time in 1902 (the year before he testified), at which time Corbett cut the timber on it. Testimony of Ashburn (Rec., 291).

By reason of the fact that Crawford's conveyance to Ashburn was made so short a time after Crawford had boxed the trees, Crawford could not have taken much turpentine himself from 383 before he conveyed to Ashburn, and his conveyance describes the trees as having "virgin boxes."

Item (3) Ashburn is therefore chargeable with the full three years value of turpentine taken. Crawford is not the less chargeable with the same because he was defending his right to the boxes and sold to Ashburn, his co-defendant, for value his right pending the suit, and is chargeable with the acts of his lessee. They are jointly and severally liable.

Sessions v. *Johnson*, 95 U. S., 347.

Complainants are therefore entitled to a judgment or decree against both Ashburn and Crawford for at least the proven value of $2.75 per acre for the turpentine *privilege* on the 386.4 acres of lot 383 so turpentined, which is ~~$786.60~~ $1062.60. Since this was a willful conversion, however, pending the suit, there ought to be a reference to the master on this item to determine the highest value attained by turpentine up to the time of the decree, or the amount received by the defendants for the turpentine itself. The complainants are entitled to this higher measure of damages.

Parker v. *R. R.*, 81 Ga., 387.
Code, 3918.
Woodenware Co. v. *U. S.*, 106 U. S., 432.

The Circuit Court refused to give complainants a decree as to this against either Ashburn or Crawford for alleged want of equitable cognizance.

Item (4) Pending the suit, ~~after~~ Ashburn had extracted all the turpentine from the trees on lot 383, Crawford leased the timber on it for cutting and sawmilling the lumber to the firm of Corbett & Crawford. Crawford then sold out, or claimed to have sold out his interest under the lease to his partner and one Field, for $6,000.00, and Corbett cut and sawmilled all the timber on lot 383 in 1901-1902 pending the suit. Testimony of Corbett (Rec., 297-299). Testimony of Crawford (Rec., 293-294).

Crawford was defending his title to lot 383 and this timber was cut under his lease made pending the

suit and by his lessees. He cannot therefore escape liability therefor.

Corbett was not a party to the suit, but Crawford was. There was a joint and several liability.

Sessions v. *Johnson*, 95 U. S., 347.

Complainants are entitled to have a decree against Crawford for at least the proven value $4.00 per acre for the timber privilege on 386.4 acres of lot 383 so cut and saw-milled, which amounts to $1,545.60. Since this was a willful conversion, however, pending the suit, and in violation of what was practically a promise to the court at the hearing on rule *nisi*, not to do so (Rec., 29-30), there ought to be a reference to the master on this item to determine the highest value attained by timber or the lumber into which it was converted up to the time of the decree, or since Crawford received $6,000.00 for a half interest in it, complainants ought to have a decree for $12,000.00 against him.

Under the facts the measure of damages is the highest value of the product into which the timber was converted.

Woodenware Co. v. *U. S.*, 106 U. S., 432.
Code Ga., Sec. 3918.
Parker v. *R. R.*, 81 Ga., 387.

It is contended by the defendants' counsel that the right to recover for the turpentine and timber is in Mrs. Jennie L. Graves who took letters of administration on the estate of Cyrus S. Graves in 1862 (Rec., 362) and because it does not appear that she was formally discharged as administratrix. But

it does not appear that any debts were proved against the estate. If there were any debts they will be presumed to have been paid long before the lapse of thirty-seven years preceding this suit. Moreover, the assent of the administratrix, as we have already seen gave to the heirs the right of possession as well as right of property, and the right to sue for the realty. Timber and its turpentine products are part of the realty in Georgia, and passes with the land.

Coody v. *Gress Lumber Co.*, 82 Ga., 793.
Balcom v. *Empire Lumber Co.*, 91 Ga., 651.

The right was in the heirs as against a trespasser in any event.

Carruthers v. *Bailey*, 3 Ga., 105.

Though the timber is severed, the right to recover for it is in the owner of the land.

Schulenberg v Harriman 21 Wall 44-64

PETITIONERS' ASSIGNMENTS OF ERROR.

That in and by its decree in said cause filed January 22, 1907 (Rec., 417), and its opinion filed therewith (Rec., 411) the said Circuit Court of Appeals for the Fifth Circuit committed error, as follows:

(1) In not holding and decreeing that there was equitable jurisdiction in said Circuit Court to grant under the averments of complainants' bill, and under the proofs, the relief prayed against the defendants W. W. Ashburn and H. T. Crawford, as a bill to restrain continuous trespasses by boxing trees for turpentine, extracting turpentine, and by cutting timber on complainants' said lands, and as a bill to quiet title, and to cancel title deeds held by said defendants originating in fraud, under color of which the defendants were committing continuous trespasses, and as a bill to remove clouds on complainants' title, and as a bill for incidental accounting for the valuable products taken and being taken from said lands by said defendants.

(2) In failing to give effect to the statutes of the State of Georgia, and decisions of the Supreme Court of Georgia, which make it unnecessary in a bill containing the averments contained in complainants' bill, to aver or prove: (a) That complainants are in actual possession of the land in controversy; (b) or that complainants will suffer irreparable injury unless restrained; (c) or that the defendants are insolvent.

(3) In not holding and decreeing and directing the Circuit Court to decree that the averments of

complainants' bill, as well as the proofs, in regard to the deed from McIntyre and Watson to W. W. Ashburn for lot 353 in the 8th District of Colquitt County, Georgia, coupled with the averments and proof of the continuous trespasses which were being committed by and under W. W. Ashburn on said lot under color of said deed, were sufficient to make said deed a cloud on complainants' title to said lot, and entitled complainants to a cancellation thereof, even though it is averred in the bill that McIntyre and Watson had no title to convey, and that said Ashburn received the deed with knowledge of that fact, it appearing that said deed is regular on its face.

(4) In not holding and decreeing and directing the Circuit Court to decree that the averments of complainants' bill, as well as the proofs, in regard to the deed from Hayes, administrator of A. T. McIntyre, Jr., to John McMullen for lot 383 in the 8th District of Colquitt County, Georgia, and the deed from John McMullen to H. T. Crawford for said lot, coupled with the averments and proofs of continuous trespasses which were being committed by and under H. T. Crawford on said lot, under color of said deeds, were sufficient to make said deeds clouds on complainants' title to said lot, and entitled complainants' to a cancellation thereof, even though it is averred in the bill that said A. T. McIntyre, Jr., had, and his said administrator had and said John McMullen had, no title to convey and that said H. T. Crawford received said deeds with knowledge of that fact, it appearing that said deeds are regular on their face.

(5) In not holding, decreeing and directing the Circuit Court to decree a cancellation of the alleged deed for said lot 383 from Joel S. Graves to James Read or Redd, and the alleged deed for said lot from James Read or Redd to Joseph H. Shewmake, and the alleged deed for said lot from Joseph H. Shewmake to Marshall Hobbs; the said deeds having been offered in evidence by said H. T. Crawford as links in his chain of title to said lot, under color of which he was committing the continuous trespasses on said lot; it having been fully established by the evidence that each of said three deeds were forgeries.

(6) In reversing the decree of the Circuit Court (Rec., 60) which overruled the demurrer of the defendant W. W. Ashburn to complainants' bill and in directing the said Circuit Court to sustain said demurrer and dismiss the said bill for want of equitable cognizance.

(7) For sustaining the decree of the said Circuit Court (Rec., 88) refusing to give any relief to complainants against the defendant H. T. Crawford, for want of equitable cognizance.

(8) For not holding that the acts of the defendant H. T. Crawford pending the suit, and the acts of others claiming under him, in extracting all the turpentine and cutting all the timber on lots 353 and 383 pending the suit (the prevention of the boxing of said trees, extracting the turpentine therefrom, and the cutting of said timber from said lots, being one of the grounds which gave the court jurisdiction at the commencement of the suit), could not deprive

the court of jurisdiction to give complainants relief in other respects, and to award complainants the value of the products which were pending the suit so taken off.

(9) In not sustaining clause 4th of the decree of the Circuit Court (Rec., 89), which perpetually enjoined the defendant W. W. Ashburn and all persons claiming under him from selling, leasing disposing of or trespassing upon lots of land numbered 354, 384 and the north half of lot 353 in the 8th District of Colquitt County, Georgia, or interfering with the timber or turpentine remaining thereon, by cutting, boxing, leasing, selling or otherwise disposing of the same.

(10) In not directing the Circuit Court to decree that the said W. W. Ashburn and others claiming under him should also be similarly enjoined from in any manner interfering with the south half of said lot 353, and with said lot 383.

(11) In not directing the Circuit Court to decree that the said H. T. Crawford be perpetually enjoined from interfering with said lots 353, 354, 383 and 384 in the 8th District of Colquitt County, and from interfering with the timber or turpentine remaining thereon, by cutting, boxing, leasing, selling or otherwise disposing of the same.

(12) In not decreeing and directing the Circuit Court to decree that the complainants had perfect legal title to said lots 353, 354, 383 and 384 in the 8th District of Colquitt County, Georgia, and quieting complainants' title to said lots as against the

said W. W. Ashburn and H. T. Crawford and all persons holding or claiming to hold under them.

(13) In not sustaining clause 5th of the decree of the Circuit Court (Rec., 89) which awarded complainants a judgment of $739.75 against W. W. Ashburn for the value of the turpentine taken by him prior to the suit from the north half of said lot 353.

(14) In not sustaining clause 6th of the decree of the Circuit Court (Rec., 89) which awarded complainants a judgment of $1,076 against W. W. Ashburn and his lessees for the value of timber cut and taken from the north half of said lot 353, by said lessees under said Ashburn, pending the suit.

(15) In not directing the Circuit Court to award complainants a joint and several judgment for at least $1067.60 ~~$786.60~~ against said H. T. Crawford and said W. W. Ashburn or his administratrix for the value of the turpentine privilege on said lot 383, it appearing that said W. W. Ashburn, acting under a conveyancee from and authority from said H. T. Crawford made during the pendency of the suit, exercised the turpentine privileges on said lot for three years pending the suit, and until he had extracted and converted to his own use all the turpentine therefrom; or in the alternative directing the Circuit Court to refer the matter of ascertaining and reporting the value of the turpentine so taken by said Ashburn and awarding the complainant the highest and full value thereof up to the time of the master's report or final decree.

(16) In not directing the Circuit Court to award complainants a judgment for at least $1,545.60

against H. T. Crawford for the value of the timber privilege on said lot 383, it appearing that pending the suit said Crawford leased the timber privileges on said lot to his firm Crawford & Corbett, which established a saw-mill on said lot and pending the suit sold out his half interest in said lot and saw-mill business to his partner and one Field, for $6,000, and that said Corbett under said lease from and authority from said Crawford cut and saw-milled all the timber on lot 383 pending the suit.

Or in the alternative directing the Circuit Court to refer the matter of ascertaining and reporting the value of the lumber so taken by and under said Crawford, and awarding the complainants the highest and full value thereof up to the time of the master's report or final decree.

That the said Circuit Court of the United States for the Southern District of Georgia, in its said decree of March 13, 1905 (Rec., 88), committed error as follows:

(1a) In dismissing the bill of complainants as against defendant H. T. Crawford for want of equitable cognizance, and in not giving the relief prayed against him.

(2a) In holding that notwithstanding that the court had equitable cognizance of the cause at the commencement of the suit (Rec., 60), that the act of the defendant H. T. Crawford or others acting under him, in destroying the timber and denuding the land of the trees pending the suit, could deprive the court of jurisdiction, to give complete relief,

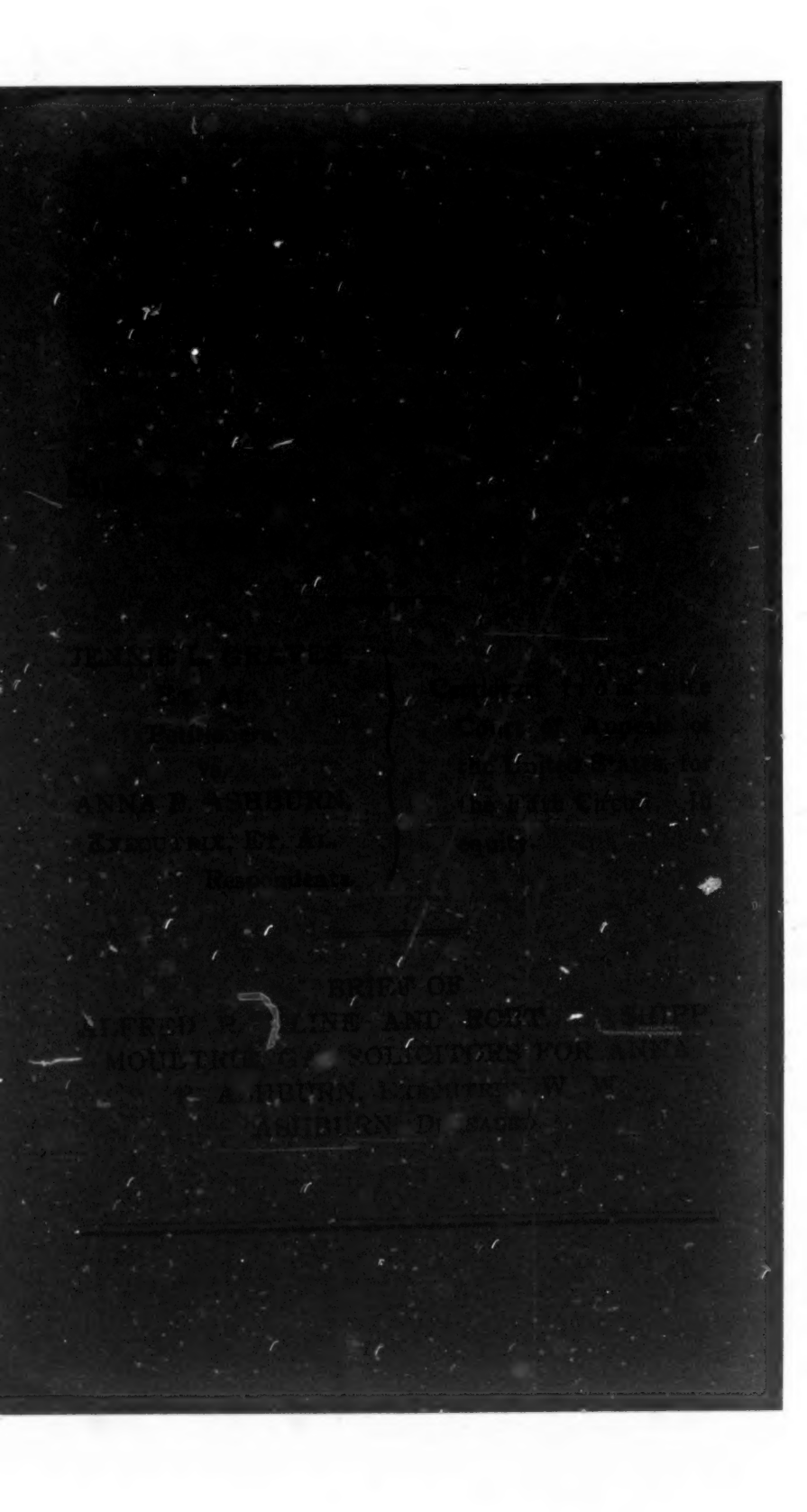
even though Crawford was not under restraining order.

(3a) In not holding and decreeing as it is stated the Circuit Court of Appeals should have directed it to decree in each of the foregoing assignments of error in relation to the said Circuit Court of Appeals. (4a) The award of costs, made by said appellants by the Circuit Court and Circuit Court of Appeals was error.

Wherefore the petitioners, Jennie L. Graves, Ida I. Graves and Minnie C. Graves, pray that the said decree of the said Circuit Court of Appeals in the matters on which error is so assigned be reversed, and that the said decree of the said Circuit Court in the matters on which error is so assigned be reversed, and that petitioners may have the said relief to which they are entitled.

MARION ERWIN,
Petitioners' Solicitor.

WM. J. WALLACE,
54 Wall St., New York,
Of Counsel.



No. 243

Supreme Court of the United States.

October Term, 1908.

JENNIE L. GRAVES, ET. AL., Petitioners, vs. ANNA P. ASHBURN, EXECUTRIX, ET AL., Respondents.

Certiorari from the Court of Appeals of the United States, for the Fifth Circuit. In Equity.

BRIEF OF

ALFRED R. KLINE AND ROBT L. SHIPP MOULTRIE, GA., SOLICITORS FOR ANNA P. ASHBURN, EXECUTRIX, W. W. ASHBURN, DECEASED.

STATEMENT OF THE CASE.

On April 29th, 1899, Jennie L. Graves, Ida J. Graves and Minnie C. Graves filed in the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia their bill in equity against H. T. Crawford, William McMullen and John McMullen, of Colquitt County, Georgia, and against W W. Ashburn, a citizen of Fulton County, Georgia, and John W. Hightower, a citizen of Dodge County, Georgia.

Complaints' bill alleged, in substance (2-11):

1st. That complainants are the only heirs of one Cyrus S. Graves, who departed this life intestate in 1863, owning various properties, among which were lots of land numbers 353, 354, 383 and 384, all in the eighth district of Colquitt County, Georgia.

2nd. Jennie L. Graves was the wife of Cyrus S. Graves; and the other two complainants, to-wit, Ida J. Graves and Minnie C. Graves, are the daughters of said Cyrus S. Graves; these three constituting the only heirs of said Cyrus S. Graves.

3rd. Said Cyrus S Graves, according to the bill, had obtained these lands from Joel S. Graves, by deed dated June 8th; 1855.

4th. Said lands were particularly valuable on account of the heavy growth of pine timber thereon, and in the aggregate were of the value of Ten Thousand ($10,000.00) Dollars, or other large sum, exceeding the sum of Two Thousand ($2,000.00) Dollars, exclusive of interest and cost.

5th. In the year 1889 complainants visited Thomasville, Ga., from their New York home, and on the advice of A. T. MacIntyre, Sr., who was a member of the firm of MacIntyre & MacIntyre, lawyers at Thomasville, engaged William McMullen to look after these lands and to keep trespassers off. At that time the timber on said lots was in its ogiginal state. Said William McMullen agreed to look after and protect said land free of cost to complainants.

6th. At the same time, to-wit, on April 2nd, 1899, Jennie L. Graves, by duly executed deed, conveyed all of her interest, except in lot 353, to her daughters, Ida J. and Minnie C. Graves, and she no longer had any interest therein.

Complainants were constantly in correspondence with A. T. MacIntyre, Sr., and William McMullen in reference to said land.

7th. Complainants' bill further avers that said MacIntyre, who was the representative of them, did, in the year 1890, as a member of the firm of MacIntyre &

Watson, convey to W. W. Ashburn one-half of lot 353, which deed was promptly recorded in the deed record of Colquitt County, Georgia, where the land lay. This deed, sothe bill alleges, constitutes a cloud on the title of complainants and prevents them from selling the timber thereon, the timber being chiefly valuable by reason of an opportunity to now sell same. The timber on this lot has been conveyed by Ashburn to Hightower, Ashburn still claiming the land, or dirt, as distinguished from the timber. (This is the only interest that Ashburn has in the matters in controversy.)

8th. H. T. Crawford is trespassing on lot 383 by reason of certain fraudulent deeds that he has to the land, which deeds he obtained through the MacIntyres and through the administrator of A. T. MacIntyre, Jr., deceased, all of which the bill alleges are wholly insufficient to convey title to Crawford by reason of the fact that they are forgeries.

9th. The bill further alleges that Crawford has entered on the half of lot 353 which was not claimed by Ashburn, and also on lots 354 and 384 in addition to the other lot (383), and is proceeding to extract the turpentine therefrom.

10th. The bill further alleges that there has been a conspiracy between their agents and attorneys and defendants in order to deprive them, complainants, of this property.

11th. Complainants further charge that William McMullen, their agent in Colquitt county, has, without any just claim, proceeded, under the state laws, to attach lot 354, on the ground that complainants are nonresidents, and is proceeding to sell same, under a judgment thus obtained; the judgment being based on a claim that said William McMullen has set up against complainants for services in looking after all of said lots except 353; a copy of the proceedings being attached to the billl. This was done without notice of any kind to complainants. Complainants owed William McMullen nothing for any services

12. Complainants visited Thomasville in 1898, and then discovered the wrongs of their agents and the other

wrongs herein set out Complainants in this bill pray injunction against all of the defendants. They pray that Crawford be enjoined from dipping any of the turpentine or conveying any of the property. They further pray that all the deeds and leases set out in the bill and any others the defendents may have, be cancelled as clouds on their titles, and there be an accounting as to the value of the turpentine and trespasses so committed. They also pray that William McMullen be enjoined from proceeding with his attachment proceedings in the State Court.

On the hearing of the temporary injunction. H. T. Crawford was relieved of the same so far he was concerned, and the chancellor (Judge Speer) refused to enjoin him from turpentining lot 383. This and the one-half of lot 353 was the only property that crawford's answer showed he claimed. He disavowed claiming any interest in any of the other lands, and denied that he had trespassed thereon.

All the respondents, including Ashburn, filed demurers, (43) which were overruled (60). They then answered, as shown by the record.

On the final hearing the bill was dismissed, so far as Crawford is concerned, and a decree was entered enjoining Ashburn and Hightower and William McMullen as prayed. A decree was also entered against Ashburn for certain sums of money on account of the turpentine and saw-mill timber on his half of lot 353 having been used by parties who had leased same from him. Ashburn appealed and the Circuit Court of appeals Fifth Circuit reversed the lower Court so as far as Ashburn is concerned: See 79 C. C. A. 478; 149 Fed. 968. Complainants certioraried to this Court. Subsequently W. W. Ashburn having died his executrix was made party (411).

We do not think it necessary to discuss the merits of the matter so far as any of the defendants are concerned

except Ashburn; however, a greater part of the pleadings, as well as evidence, was directed at the other defendants. Ashburn demurred to the bill on various grounds; this demurrer the court overruled. Error is assigned thereon. Error as to the overruling of the demurrer is assigned in the first nine assignments filed in the appeal, and are discussed hereafter.

While we have no doubt as to the correctness of the position taken by Ashburn, in his demurrer; and while we are confident that the court below erred in not sustaining the demurrer; yet as the evidence on the trial of the case so overwhelmingly demanded a decree in favor of Ashburn, we trust that this court will examine into the evidence before taking up the demurrer and give judgment in favor of Ashburn on the evidence. We do not desire to be understood as in any way waiving the benefit to be derived from the demurrer of this respondent, Ashburn, but we insist that accomplainants, having submitted their cause to an improper forum, and in an improper way, cannot be heard to complain if this court should decree that, under the evidence, Ashburn must prevail. By the court giving the matter this direction, the issues would be fully concluded and not have to be tried again. If, however, this court should not be entirely clear that the evidence demanded a decree in favor of Ashburn, we then confidently rely on the demurrer.

Each of the respondents filed separate demurrers (41-47) and separate answers (61-72) on the trial-chief-in-fact separate defenses were necessary as each respondent represented a separate and distinct cause.

The court overruled all the demurrers (60). The Court of Appeals Fifth Circuit reversed the Chancellor (Judge Speer) on the overruling of respondents demurrers (See Ashburn V. Graves et al 79 C. C. A. 478; 149 Fed. 968

DEMURRER OF W. W. ASHBURN.

We trust that the court will keep clearly in mind that Ashburn is in no way connected with the matters

therein involed, and is no way concerned in any of those matters, except that he is the owner of the north half of lot No. 353. If the court will keep this clearly in mind no great difficulty will be had in adjudicating Ashburn's rights. If, however, the court does not keep this in mind Ashburn's rights cannot be properly passed on.

Ashburn duly demurred to complainant's bill in substance as follows(43).

1st. No equity in the bill; complainants have a complete remedy at law.

2nd. The bill does not show that the amount involved so far as this defendant is concerned is Two Thousand ($2,000.00) Dollars; nor does it otherwise appear that the amount involved is sufficient to give the court jurisdiction.

3rd. The bill unites various defendants; who have no connection with each other; unities various separate controversies between the complainants and the several defendants; this defendant has no interest or concern with the several alleged trespasses and wrongs of his co-defendants.

4th. The deeds of this respondent do not constitute a cloud on complainant's title. Nothing is shown to authorize complainants to have this respondents title cancelled.

5th. The interests of complainants are not identical. Three of complainants claim interest in lot 353, while only two of complainants claim to be inserested in the other lands.

6th. Complainants have not come within the statute provided in Georgia to entitle them to injunction for the cutting of the timber. No sufficient abstract of title is attached. No allegation of insolvency as against this defendant.

7th. Complainants are guilty of such laches and have delayed for such an unreasonable length of time in asserting their claim, if any they had, that a court of equity cannot give the relief asked as against this defendant.

8th. There is no verification of the bill; no sufficient allegation of irreparable injury. The material facts on which relief is sought are not postively verified.

ARGUMENT AND AUTHORITIES ON BEHALF OF ANNA P. ASHBURN EXECUTRIX OF W. W. ASHBURN.

We respectfully insist that the court should have sustained the demurrer of this respondent on each of the several grounds therein contained.

Assignments 1, 2, 6 (385-390)

We insist that there was no equity in the bill so far as this defendant was concerned, and that complainants had a complete remedy at law against him. It will be at once cenceded, we presume, that the equity courts of the United States psoceed independently of any statute of the state(16 Cyc. 37). However, under the statute of Georgia (even though in equity cases in Georgia a jury trial is provided for), this ease could not be maintained on the equity side of the state court.

See the cases of—

Wilcox Lumber Co. v. Bullock, 109 Ga., 532.
Camp v. Dixon et al., 111 Ga., 674.
Jenkins Bros. v. Carmen, 112 Ga., 476.
Wiggings v. Middleton, 117 Ga., 162 et cit.

The case of Ocmulgie Lumber Co. v. Mitchell, 112 Ga., 528, holds as follows:

> "As a general rule, equity will not interfere to restrain a trespass, unless the injury is irreparable in damages, or the trespasser is insolvent.
>
> "2nd. Where petition under which the injunction is sought sets out, in particularity and in detail, different acts which it is alleged constitute the trespass, and affixes in money the damages which the plaintiffs sustain by each of such several acts, there is no foundation for the claim that such damages are irreparable."

Also see—

Rogers v. Brown, 118 Ga., 494.
Woodstock v. Leake, 118 Ga., 642.
Powell v. Brinson, 120 Ga., 36.
Stonecipher v. Wilson, 120 Ga., 466.

The only statute of Georgin which modifies the common law rule as to application to enjoin cutting timber is found in Section 4927 of the Code, and reads as follows:

> "In all applications to enjoin the cutting of timber for sawmill purposes, and railroad-ties and bridges timbers for railroad purposes, or to enjoin the cutting of timber or boxing or otherwise working the same for turpentine purposes, it shall not be necessary to aver or prove insolvency, or that the damages will be irreparable: provided, the petitioner has perfect title to the land upon which the timber is situated, and shall attach an abstract of his title, stating name of grantor and gaantee, date, consideration, and description of property, names of witnesses, when and where recorded, to his petition, and produce the original titles before the judge: And provided, that the judge granting said temporary restraining order shall require the petitioner to give such bond as in his discretion he may deem proper to be approved by the Clerk of the Superior Court, to answer the damages, if any, which may be sustained by the defendant by reason of the granting of said injunction, and if, on the final hearing of the cause, damages against the petitioner are proven, judgement shall be entered against the sureties on said bond as in appeal cases.

The Supreme Court of Georgia, as shown in the cases above cited, holds that this statute does not avail in cases similar to the one at bar.

The Supreme Court of Georgia in the case of Dixon. Mitchell & Company v. Monroe, 112 Ga., 158, holds:

> "1st. The 'perfect title' which will, under Section 4927 of the Civil Code, relieve an applicant for

an injunction from averring and proving insolvency of the defendant, or that the threatened damage will be irreparable, or other circumstances rendering the interposition of the writ necessary and proper, must be a *duly executed paper title*, (italics ours), consisting entirely of papers capable of being recorded

"2nd. If the papers produced under the requirements of the section above referred to do not upon their face show both 'the right of posession, and 'the right of prorerty' in the application for injunction parol evidence is not admissible for the purpose of curing the defects.

"3rd. A recital in a deed that the parties making it are *heirs at law* (italics ours) of a former owner is no evidence of the fact recited, except as against parties to the deed and their prives."

Also see—

Morgan v. Baxter & Co., 113 Ga., 144.
Wiggins v. Middleton 117 Ga., 162.

Also see case of Jenking Bros. v. Carmen, 112 Ga., page 476, in which the court held that even where all parties claim from the same source, that a title such as the one at bar (heir title) will not avail.

This statute (Code, Sec. 4927) is in derogation of the common law, and therefore strictly construed. It will be seen that this section requires the plaintiffs to produce the "original title" before the Judge. In the case at bar, plaintiffs did not produce the original plat and grant to the property in question (353), but only a a certified copy (338). Nor did the plaintiffs give bond, as required by this section. Therefore it will be seen that even with this liberal statute of Georgia and also with the right of trial by the jury, as provided in Georgia for such cases, this equity proceedings would not be maintainable under the Georgia statute.

We respectfully submit, however, that the equity statutes of this state have no bearing whatever on the case at bar. 16 Cyc., 37.

We insist that the judgement overruling this respondent's (Ashburn's) demurrer cannot stand without doing violence to the principles as enunciated in the case of McGuire v. Pensocola City Co. et al., 105 Fed., 677, 44 C. C. A., 670. We respectly submit that the decision in the McGuire case is correct, and is based on a long, unbroken line of decisions of the Supreme Court of the United States.

Without naming in detail each of the authorities cited in that case, we would call them to the attention of this court.

The Supreme Court of Georgia, in the case of Rogers Admx. v. Brand et al., 118 Ga., 494, holds:

> "This being an action to enjoin commission of a trespass, and there being no allegation in the petition that the threatened injury is irreparable in damages or that the defendant was insolvent, and no cause for equitable interference being made to appear, it was not error to refuse injunction."

Also, to the same effect, see the case of Woodstock Iron Works v. Leake et al., 118 Ga., 642.

This court is familiar with the principle embodied in section 723 of the revised statutes requiring:

> "That suits in equity shall not be sustained in either of the courts of the United in any case where plain, adequate and complete remedy may be had at law."

In the case of Cruickshank v. Bidwell, 176 U. S., 81 (44, 381), the court, speaking through the Chief Justice, said that this section "certainly means something; and if only declaratory of what was always the law, it must, at least, have been intended to emphsize the rule and to impress it upon the attention of the courts."

On the same page, the court, noticing the ground of irreparable injury as one of equitable relief, said:

> "The mere assertion that the apprehended acts will inflict irreparable injury is not enough. Facts must be alleged from which the court can reasona-

bly infer that such would reasonably be the result."

The Supreme Court of North Carolina, in the case of Gause v. Perkins, 3 Jones Equity 177, 69 Am. Dec. 728, held as follows:

> "Cultivation of pine trees for turpentine, or cutting down of oak trees for staves, or cypress trees for shingles is not destruction * * * and will not be deeemd an irreparable injury unless there be an averment of defendant's insolvency. Bill alleging that trespasser is about to commit irreparable injury by boxing and working the turpentine trees and by cutting timber and making staves on land fit to be cultivated only for these products will, unless there be an averment to defendant's insolvency, be dismissed on motion."

This decision is referred to favorably by many of the courts and by many text writers, including Mr. High in his work on injunctions.

Also see Carney v. Hadley 32 Fla. 344; 22 L. R. A. 512; 12 Am Dec. 550. Being a very similar case.

In Complainant's brief on the petition for certiorari, considerable stress is laid on the Georgia case of Camp vs. Dixon 112 Ga. 872.

We call the Court's attention the cases of

Camp vs. Dixon 111 Ga. 674.
Dixon v. Camp 112 Ga. 158.
Wiggings vs. Middleton et al 117 Ga. 162.

The opinion in all four of these cases were written by the same Justice. The case in 112 Ga. 872 relied on by petitioners is easily distinguishable from the instant case—While the other three cases, (111 Ga. 674, 112 Ga. 158 117 Ga. 162) are practically identical with the case at bar; we do not care to discuss these cases further; but ask the court simply to read the one in the light of the other.

> "The appropriate remedy against intruders on land is an action of ejectment at law, and not by bill in chancery."

Galt vs. Galloway. 4 Pet. 332 (7:876)

"Illegal and fraudulent use of ancient grants, and illegal proceedings of the land department do not create a case for equity, as all facts as to title can be shown in an action at law."

Smyth vs. N. O. Co. 141 U. S. 656 (35:891)

This case cannot be maintained as an action to quite title, because complainants were out of posession. As a matter of fact, this lot was in posession of defendant, and others claiming antagonistic t› complainants; however, it matters not whether defendants were in posession. In the language of the Supreme of the United States, "Those only who have a clear legal and equitable title to land, connected *with possession,* (italicsours), have any right to claim the interference of a court of equity, to give them peace or dissipate a cloud on the title A person out of posession cannot maintain such a bill, whether his title is legal or equitable; for if his title is legal his remedy at law, by action of ejectment, is plain, adequate and complete; and if his title is equitable, he must acquire the legal title and then bring ejectment."

Frost v. Spitley, 121 U. S. 556 (30; 1010).
McGuire v. Pensacola City Co., 105 Fed., 678, 679, 44 C. C. A., 670.
Munson v. Munson, 28 Conn., 592; 73 Am Dec., 693.
Thompson et al v. Etowah Iron Works, 91 Ga., 538.
United States v. Wilson, 118 U. S., 86 (37-110).
Smyth v. New Orleans etc. Co. 141 U. S. 656; (35:891) much in point.
Adams v. Johnson 129 Ga. 612.
Orten v. Smith, 18 How., 263 (15-293).

To this last case we call special attention of the court.

The suit cannot be maintained on the idea that it may avoid a multiplicy of suits. The case of McGuire v. Pensacola City Co. deals specifically with this question, and holds "even if a number of suits were required to settle the controversy to lands, each defendant would have the right to submit his claim of title and right to possession to a jury". It is not claimed anywhere in

the bill that Ashburn has done anything that would deprive him of his right to have his title to his land submitted to a jury.

Also see opinion of Chief Justice Simmons, in Griffin v. Henderson, 116 Ga., 511, in which it is held that equity has no jurisdiction especially where discovery is waived, as in the case at bar.

The bill shows that Ashburn claims only the land or dirt on the north half of Three hundred and fifty-three (353). He had leased the timber to others. Therefore, so far as Ashburn is concerned this is a bald attempt to recover from Ashburn the land on half of lot Three hundred and fifty-three (353). Besides, paragraph 16 of the bill shows that complainants desire only to recover the timber in order that they may sell it again. This of itself would be sufficient to preclude all idea of irreparable damages; a verdict for damages would be all that complainants would need. It is not claimed that Ashburn was a party to any of the frauds of the other defendants. It is nowhere claimed that Ashburn is insolvent, nor any other ground of equitable relief shown.

Assignment 3.

Ws respectfully insist that the bill nowhere shows that the land in controversy, so far as Ashburn was concerned, was sufficient to give the United States court jurisdiction. And for this reason the demurrer should have been sustained, if for no other.

In fact, the bill negatives the idea that the claim against Ashburn amounts to Two Thousand ($2,000.00) Dolllars. One purpose of this bill on the part of complainants was to recover four (4) lots of land, all of equal size, and all, except the lot now in question (353), contained timber in its original state. The timber on lot 353 had already been boxed for turpertine, and therefore it was less valuable than the other lots. Complainants' bill (par VIII) claimed that all of the tracts of land were of the value of Ten Thousand ($10,000 00) Dollars. Ashburn's interest was only one half of lot 353, which had already been turpentined; therefore it was worth less than one eighth of the whole amount

This is too small an amount to give the United States court jurisdiction.

Assignment 5.

We insist that the bill was multifarious. It united various defendants who had no connection with each other. The interests of the complainants were not identical. Ida J. Graves and Minnie C. Graves claimed an interest in all of the properties. while Jennie L. Graves the other complainant, claimed interest in only a part of the property (lot 353), she having, according to the bill, long prior to the filing thereof, parted with all of her interest in all of the property except lot Three hundred and fifty-three (353). The bill showed that the interests of complainants were not identical the properties were not identical, and the defendants' interests are not identical. In this connection, see the case of Walker v. Powers, 104 U. S., 245.

The reasons for the rule are:

(a) The desire to prevent the defendant from unnecesssary expense.

(b) To serve the convenience of the defendant.

(c) To avoid compelling a defendant to present unnecessary defenses.

(d) To avoid complicating his defense by combining matters which have no connection with each other.

(e) This rule is founded on convenience to the defendant.

There must be a community of interest among all the claimants in the question at issue and in the remedy.

This case illustrates forcibly the reasons for the rule.

In this proceeding, involving as to Ashburn, so far as the bill shows, an amount too small to give the court jurisdiction, Ashburn is forced, in order to defend, to bear the burden of many issues disconnected entirely from him and from his property. A casual inspection of the record will show that only a small part of the evidence related to him and the property claimed by him. It will be readily seen that this is an imposition and a

burden placed on him, entirely unwarranted and undeserved. In the note found on page 402. Book 11, of the Lawyers' Edition of the United States Supreme Court Reports is the following:

> "By multifariousness in a bill is meant the improperly joining in one bill distinct and independent matters, and thereby confounding them. as the uniting is one bill of several matters, perfectly distinct and unconnected, against one defendant, or the demand of several matters of a distinct and independant nature against several defendants in the same bill. * * *
>
> "Seeking to enforce different demands against persons liable respectively, but not as connected with each other, it (the bill) is clearly multifarious. * * *
>
> "In the latter case, the proceeding would be oppressive, because it would tend to load each defendant with an unnecessary burden of costs, by swelling the pleadings with the statement of the several claims of the other defendants, with which he has no connection. * * *
>
> "In the former case, the defendant would be compellable to unite. in answer and defense, different matters wholly unconnected with each other; and thus the proofs applicable to each would be apt to be confounded with each other, and great delays would be occasioned by waiting for the proofs respecting one of the matters when the others might be fully ripe for hearing."

It will be seen that Ashburn, has nothing in common with H. T. Crawford, William McMullen or John McMullen, the other defendants.

We also call to the court's attention, as authority on this proposition, 14 Enc. Pl. & Pr., 200, and also the case of Walker v. Powers, 104 U. S., 245 (3) [26 L. Ed., 729].

The Supreme Court of Georgia, in the case of Marshall v. Means, 12 Ga., 61 (3) holds:

> "A complainant is not permitted to demand several distinct matters, of distinct natures of several defendants. nor several matters which are perfectly unconnected of the same defendant.

Also to same effect, see Stuck v. The Southern Steel and Aluminum Alloy Co , 96 Ga., 95, and Portwood v. Huntress, 113 Ga., 815, P. D. 819.

In a recent case (Griffiin v. Henderson, 116 Ga., 310) Mr. Chief Justice Simmons, speaking for that court said, in dismissing a bill for multifarousness:

> "While each defendant is alleged to have property belonging to the estate petitioner represents, it does not appear that they hold any of his property in common; and while petitioner sets up the same rights to the posession of the property in the hands of each, he does not allege that they acquired it in the same way or under the same claim to its possession."

This decision by the Supreme Court of Georgia also deals with the question of equity jurisdiction generally in matters, such as is the case at bar, where no discovery is prayed. If this decision is recognized as authority, it controls the question both as to the want of equity in the bill and also as to its being multifarious. In this connection we also call to the court's attention:

Webb v. Park, 110 Ga., 639.
Zeigler v. Lake Ark. Co. 76 Fed., 662; 22 C. C. A., 465.
N. H. Sav. Bank v. Rickey, 121 Fed., 956; 58 C. C. A., 294.
14 Enc. Pl. & Pr. 200 et seq.
Walker v. Powers, 104 U. S., 245.
Martin v. Brown 129 Ga., 562 (3).

We ask the special attention of the court to the case of Portwood v, Huntress, 113 Ga., 815, and call particular attention to the reasoning of President Justice Lumpkin, on page 819 thereof. The reasoning in that case should control, we insist, the demurrer of Ashburn on this point.

The case of Martin v. Brown 129 Ga., 562 (3) P. D. 569 is controlling if followed by this court.

This question is dealt with in 1st vol., 3rd Ed., Pomeroy's Equity Jurisprudence, sec 251½. We call special attention to the notes under this section, dealing fully with this question.

Assignment 4—Cloud on title.

This bill could not be maintained as a bill to remove cloud on title. The Supreme Court of Georgia, in the case of Thompson v. Etowah Iron Co., 91 Ga., 538, defines what is cloud on title. In that case the court followed the decision of Mr. Justice Field in the case of Pixley v. Huggins, 15 Cal., 133, and held that to constitute a cloud on title, the pleadings must show that the deeds, which are sought to be cancelled, show on their faces that they constituted a clear, perfect title to the land in question. In the case at bar it is not claimed in the bill that Ashburn has an apparent title to the land. Without quoting further from that decision, we call the court's attention to the number of cases cited therein, and also to the case of Detroit v. Martin, 3 Mich., 170, 22 Am. Rep., 512, also 7 Cyc., 253, and cases thereunder cited, Black's Law Dictionary, page 204; Munson v. Munson, 28 Conn., 582, 73 Am. Dec., 693. Also see Adams v. Johnson 129 Ga., 611.

According to plaintiffs' bill, Ashburn's title to the lot in question was not sufficient to constitute a cloud, even though complainants themselves had been in position to ask for a removal of any cloud that may have been on their title. Adams v. Johnson 129 Ga., 612.

Assignment 7—Laches.

We think that complainants have waited too long to now ask the courts to help them to recover this lot (353). Cyrus Garves, from whom they claim to inherit, died in 1863 [1862] in the Confederate Army (par. VI of bill) and this is the first time that his heirs or administrators have ever set up claim to lot 353, which is the only lot in which Ashburn claims any interest. We think that for this reason alone, if for no other, the bill should have been dismissed on demurrer.

On March 20th, 1889, Jennie L. Graves, the mother,

conveyed to her daughters, Ida J. Graves and Minnie C. Graves, the other two complainants, all of her interest in her other lots in Colquitt county, thus admitting again the fact that they had no claim on lot 353 [Bill, par XII).

The bill nowhere shows that she ever at any time returned this lot for taxes or exercised an act of ownership over it in any way. In fact, the bill shows that her attorney and representatives in Colquitt County never returned it for taxes or considered that she claimed it.

The title to this lot (353) had long passed into the hands of innocent purchasers. In such instances as this, the Federal Courts have uniformly held that complainants are estopped by their laches.

This doctrine is independent of any limitation prescribed by statute.

Abraham v. Ordway, 158 U. S., 416 (36: 1039).
Galliher v. Caldway, 145 U. S., 368 (36: 740).
Hannah v. Hopkins, 143 U. S., 224 (36: 134).
Fletcher v. Fuller, 120 U. S., 534 (30: 759).
16 Cyc., 163 et seq.

In the case of St. Paul and S. & T. F. Ry Co. v. Sage, 49 Fed., 315, 1 C. C. A., 256, the court held:

> "Independently of the statute of limitations it was laches for the complainant company to delay the assertion of its title for fourteen years after the conveyance of the lands to the defendant company, during which period the lands were sold by defendant to settlers, whose title is necessarily clouded by the present proceedings."

In that case, the court in the body of the decision holds that it was the duty of complainants to show by their bill that they had exercised reasonable care with reference to the land and that their mere ignorance would not excuse them. In that case the laches won only for 14 years, while in the case at bar it was for more than thirty years. We do not believe that there can be found any decision of any court of last resort, in cases similar to this, but what will hold that complainants are barred by their long laches. The appellate courts

of the United States have uniformly refused relief to parties who are in such laches as complainants' bill show them to be. We insist that the judgment in this case, so far as Ashburn is concerned, cannot stand without doing violence to the case just cited and the long line of authorities on which it was based and which are cited therein.

See 16 Cyc. 163, 164, 165.

We respectfully submit under the autcoriues above cited that the court should have sustained the demurrer of Ashburn each and every ground therin set out.

Assignment 10.

We respectfully submit that the court erred as set out in the tenth assignment of error in decreeing that complainants had a perfect title to the north half of lot 353. Again, the evidence shows (383)that Jennie L. Graves, the administratrix on the estate of her husband, Cyrus S Graves, did not claim this property as belonging to the estate. All of the other lots were inventoried by her as admisistratrix on the estate of of Cyrus S. Graves, through whom all of the of complainants now claim (383). The law of Georgia (Code 3408) requires the administrator to inventory all real estate lying without the country. Administration was had in Thomas County (Record, 362,383), and this land was in Colquitt County.

Neither complainants nor their agents ever return this lot for taxes in Georgia or elsewhere. It is shown by the evidence of complainants' kinsman, E. O. Thompson, who was the administrator on the estate of Abram Graves the father of Cyrus S. Graves, that this lot was sold by him to Dr. Bruce and Dr. Bower (155—158). Cyrus S. Graves was largely indebted to his father, Abram Graves (155—158), as shown by evidence put in by complainants (359), and this lot was conveyed, we insist to settle this indebtness. Complainants' own deed (300) has written in it, opposite lot 353, words showing that this lot was actually sold and never did

belong to complainants. Ashburn claims through the Bruce and Bower title. (356, 317, 318).

While Thompson could not remember the exact number of the lot he sold as administrator of Abram Graves, yet he identified it as being the lot which he did not thereafter return for taxation (346, 157); therefore necessarily, he sold lot 353. (See exhibit No. 57). Order of sale and return by administrator shows sale (exhibits 52, 53, page 343). It was not the duty of the appraisers of the estate of Abram Graves, who was a resident of Thomas County, to include this lot. (Code, Sec. 3408). The burning of the court of Colquitt County and of the records, in 1881, prevents a copy of these old deeds, but all the evidence goes to show to show that they were made. The return of Jennie L. Graves as administratrix on the estate of Cyrus S. Graues are admissions that Cyrus S. Graves did not die claiming this land. See the case of Horkan v. Benning, 111 Ga., 126. This admission was made when Bruce and Bower were living and when all the facts were fresh in the minds of the witnesses and before the deed records in Colquitt County had been destroyed by fire, On this admission Ashburn has acted. He bought from Watson & MacIntyre (318), and Watson in turn had bought the Bruce and Bower title (317), this property having gone to Bettie Bruce Daniels on a division of Dr. Bruce's estate (356), there being three heirs (368). MacIntyre, Jr., was not interested in the piece of land, but signed the deed with Watson to Ashburn simply because he owned other land conveyed in the deed.

In 1889, Jennie L. Graves conveyed all of her property in Colquitt County to her daughters (339) and left this lot out. And in another case, just before this bill is filed, she swears that she has sold all of her land to her daughters (310). No taxes were ever paid on this land by complainants (346). This lot was recognized as the land of Bruce and Bower, and complainants did not set up any claim to it until they thought the burning of the court house in Colquitt County in 1881 had destroyed the Bruce and Bower title. Complainants are in possession of the plats and grants to all of the

other lots except this one. Had they owned this lot they would have had the plat and grant to it.

We respectfully submit that complainants, having for over thirty years, in every way possible, asserted that this land did not belong to them, cannot now claim it. In this connection we beg to refer to the authorities cited on the demurrer as to the laches.

That the deed was made to Bruce and Bower (155, 158) by E. O. Thompson, administrator of Abram Graves cannot be denied. This was in 1866, and possession has been consistent therewith for a period of time much longer than seven years—seven years being the time required in Georgia to give a good prescriptive title. See the case of Roberson v. Downing Co., 120 Ga., 833. This case holds that it is not necessary to even record the deed under which the possessor claims. This decision has been followed in a still later case of our Supreme Court—O'Brien v. Fletcher et al., 123 Ga., 427. Also see recent case of Dodge v. Cowart 131 Ga., 549.

In these later decisions, the Supreme Court of Georgia shows that the decisions apparently in conflict therewith, as to necessity of record of deed, were based on the Code of 1895, which Code was subsequent to the decisions theretofore made; the Code also being subsequent to the Bruce & Bower deeds; in fact subsequent to all of the deeds in the Ashburn title.

In this connection we call the court's attention to the opinion of Newman, District Judge, in the case of Bentley v. Reed, 66 C. C. A., 533. The decision of the Supreme Court of Georgia, however, in the cases of Roberson v. Downing Co., 120 Ga., 833, O'Brien v. Fletcher, 123, Ga., 427., and Dodge v. Cowart 131 Ga., 549 cover this fully.

The Supreme Court of Georgia, in the case of Field v Boynton, 33 Ga., 239, held that a sheriff's receipt for purchase money of a lot of land he sells is good as color of title. Also see Wooding v. Blanton, 112 Ga., 509. Therefore, the evidence of Thompson, administrator, if it did nothing else, showed a good color of title under which prescription could ripen. His return as adminisnrator (exhibit 52, page 343) shows he sold wild

land in Colquitt County. His evidence (155-158), taken wilh tax returns of lot 353 (346) shows he sold this lot as administrator of Abram Graves. Besides this, Ashburn bought from A. M. Watson and A. T. MacIntyre, Jr. (not A. T. MacIntyre Sr., compliant's agent) in 1890, and the deed went promptly to record (exhibit 24. record, page 318), and possession has been held thereunder continusously. Watson, as above stated, had bought it from Betty Bruce Daniels. who had obtained it from other Bruce heirs, one of the parties who had originally purchased it from E. O. Thompson, administrator of Abram Graves, deceased.

Therefore, waiving all prior possession, there was more than seven years' possession on this land subsequent to the Ashburn deed. See evidence of J. F. Cooper (276). This alone will be sufficient to cure all defects in Ashburn's title, if any existed.

The Supreme Court ot Georgia, in the case of Flannery v. Hightower, 97 Ga., 606, has held that turpentining is such posssession as will support a prescriptive title. Code, Sec. 3585, describes actual possession of lands as consisting of enclosure, cultivation, or any other use or occupation thereof which is so notorious as to attract the attention of every adverse claimant, and so exclusive as to prevent actual occupation by another. Sec. 2586 of the Code of Georgia is as follows:

> "Constructive possession of lands is where a person having paper title to a tract of land is in actual possession of only a part of it."

Sec. 3589 is as follows:

> "Adverse possession of lands, under written evidence of title, for seven years, shall have a like title by prescription."

Also see the recent cases of Baxter & Co. v. Wetherington 128 Ga., 801 and Dodge v. Cowart 131 Ga., 549. The facts in both of which cases are similar to the case at bar.

In view of the fact that all the deeds in this case

antedates the Code of 1895, Sec. 3587 has no bearing thereon. See the cases just above cited.

There is not the least suspicion as to Ashburn's acts and doings, and all the evidences shows that he was acting in entirely good faith. No normal-mined person can conclude otherwise The question of possession in good faith on Ashburn's part is overwhelmingly supported by the evidence. It is evident that but for the fact that complainants were bringing suit for the other lands they would never have claimed this lot. This lot was evidently added to the suit on the idea that as suit had to be filed any way, they would include it.

Under the decision of St. Paul, S. & T. F. Ry. Co. v. Sage, 49 Fed. Reporter, 315: 1 C. C. A., 256, complainants should have ascertained their rights long before this and claimed them.

See also the case of Fletcher v. Fuller, 120 U. S., 534 (30:759), in which is stated:

> "Payment of taxes has been admitted in questions of adverse possession, and may have important bearing, as it is not usual for one owning reality to neglect paying taxes for a period which would be sufficient to constitute a bar under the statute of limitation, or for one to pay taxes having no color or claim of title."

The taxes were paid only by Ashburn and his agents (346)

Also see in this connection Varness v. The Bank of United States, 13 Pet., 17 (10:38).

Statutes of limitation known as statute of repose and in a wise and solutary policy and points the ends of justice.

> Lewis v. Marshall, 5 Pet., 470 (9: 179).
> Gulliver v. Colwell, 145 U. S., 368.

The conclusion is irresitible that these complainants never claimed lot 353 from 1862 until just before the bringing of this suit: they never paid any taxes on it, and if their claim is allowed against an innocent pur-

chaser for value, it would be most inquetable. Complainants are estopped on all equitable principles.

Assignment 11.

The court having found from the evidence that complainants had a perfect legal title to the north half of lot 353 (which composes the whole interest Ashburn had in the suit), he erred in proceeding further in this equitable proceedings and entering up a decree against this respondent. If complainants had a perfect legal title as decreed by the court, they had a perfect and complete remedy at law.

Cunningham v. Morris. 19 Ga., 583.
McGuire v. Pensacola City Co., 105 Fed., 677; 44 C. C. A., 670.
Wiggins v. Middleton 117 Ga., 162.

Under these authorities we insist that the court, as soon as he found that complainants had a perfect legal title to this property, should have dismissed the proceedings on the equity side of the court and remitted complainants to their remedy at law.

As a matter of fact complainants have neither a legal nor equitable title to lot 353.

Assignment 12.

The twelfth assignment has already heretofore been argued.

Assignment 13.

We respectfully insist that in any event it was error in the court to enjoin Ashburn as to lot 354 and 384. There was no evidence or pleadings showing that Ashburn had ever at any time claimed any interest in these two lots of land, and so far as the evidence shows Ashburn had never in his life even seen these two lots of land. Certainly he never in any way attempted or threatened to trespass on them or in any way to deprive complainants of the full enjoyment of them. We submit that in the absence of all evidence along this line it is error to enjoin Ashburn as to those lots.

We insist that it was likewise error to enjoin Ash-

burn as to the north half of 353. As has heretofore been shown in this brief, Ashburn had a good paper title, and a good title by prescription, to the north half of 353. The evidence showed that complainants never, until the filing of the bill, claimed this land, and had never returned it for taxes, and had publicly stated and made affidavit that they did not own this lot. It was also in evidence (246, 251, 258) that complainants had settled with E. O. Thompson, administrator on the estate of Abram Graves, who sold this lot, for whatever he owed them, by reason of having been administrator on Abram Graves' estate, and selling this lot (252-258). And they could not, while holding these proceeds of the administration of the estate of Abram Graves, have sued for this lot, even though E. O. Thompson had no right in the first instance to sell it.

Leggett v. Peterson, 122 Ga., 182.
Wood v. Davis, 107 Ga., 780.

Assignment 14.

We respectfully submit that the court erred in entering a decree in favor of complainants against this appellant for the sum of Seven Hundred and Thirty-nine Dollars and Seventy-five Cents ($739.75) for the carrying away of turpentine on the north half of lot 353.

There was no allegation in the bill as to when this took place, nor as to the value thereof at the time.

Code Section 3879 is as follows:

> "All actions for trespass upon, or damages to realty, shall be brought within four years after the right of action accrues".

Now neither the pleadings nor the evidence claim this timber was cut for turpentine within that period (4 years).

In fact at the time it was cut complainants did not claim this lot, 353

There was no evidence whatever that Ashburn had at any time carried away any of the turpentine from this lot. It is true that at one time he leased the turpen-

tine privileges to other parties, but we respectfully submit that Ashburn cannot be held responsible for the value of the turpentine taken and carried away by his lessees. The law of Georgia as to the measure of damages is found in section 3918 of the Code. This section is not an act of the legislature, but is taken from the case of Parker v. Waycross & Florida Ry. Co., 81 Ga., 387. This decision of the Georgia Supreme Court is in turn based on the case of Woodenware Co. v. United States, 16 Otto 106 U. S. 432 (27:230). In that decision, by Mr. Justice Miller, it will readily be seen that the theory on which these damages are recoverable is in the nature of a trover proceeding, and the damages arise upon the theory that the defendant has had actual possession of the property of the plaintiff and therefore is responsible to the plaintiff for the value at the time it is in his (defendant's) possession. The defendant is in no event liable for the value of the property accuring after once it passes out of his hands. Mr. Justice Miller states this with so much clearness in the case above cited that we feel it is best simply to refer the court to the opinion in that case rather than to attempt to argue it further.

This is born out in the case of United States v. Homestake Min. Co., 54 C. C. A., 308, top of page.

If Ashburn could be liable in any event for the turpentine privileges he would be liable only for the value of them at the time they passed out of his possession and control; to hold otherwise would do violence to the case of Woodenware v. United States, above cited, which is the leading case in the United States on this question. Also see U. S. v. Homestake Min. Co., 117 Fed., 481; 54 C. C. A., 303.

It is not claimed that the party who cut the timber is so insolvent, and if he is, complainants could sue him and have garnishment served on Ashburn, and in case they recovered, require Ashburn to pay them the amount of money he actually received for, or the value of, the turpentine privileges at the time he sold it.

This we respectfully submit, is the policy of the United States courts, and is also the policy of Georgia: Section 3804 of the Code of Georgia provides that a

party selling land in Georgia under a warranty title is liable to the purchaser only for the purchase money, with legal interest (7 per cent.).

Besides, it must be remembered that at the time Ashburn leased this timber to others for turpentine purposes, complainants did not claim it.

There was absolutely no evidence showing the amount of turpentine taken and carried away from this land. This was necessary under the decisions above cited and under Code section 3918, which is as follows:

> "Section 3918. Measure of Damages for Timber Cut. Where plaintiff recovers for timber cut and carried away the measure of damages is:
>
> "1st. Where defendant is a willful trespasser, the full value of the property at the time and place of demand or suit brought without deduction for his labor or expense.
>
> "2nd. Where a defendant is an unintentional or innocent trespasser, or innocent vendee from such trespasser, the value at the time of conversion, less the value he or his vendor added to the property.
>
> "3rd. Where defendant is a purchaser without notice from a willful trespasser, the value at the time of such purchase."

We also insist that any damages to be recovered cannot be had by the heirs as such, but must have been recovered by an administrator on the estate of Cyrus S. Graves. Mason v. Atlanta Fire Co., 70 Ga, 607; Code, 3353.

In any event, the question of damages is a question for the jury. Horkan v. Benning, 111 Ga., 126.

Assignment 15.

The court erred in entering a decree against this respondent for the sum of $1,076.00, or any other amount for the alleged value of the saw-mill timber thereon. All the argument set out above as to the four-

teenth assignment of error applies to this assignment. In addition thereto, it will be seen that the court had enjoined this respondent from in any way interfering with the saw-mill timber on the land in question. This injunction was granted at complainants' instance. While this respondent was in this condition, others entered on the land and carried away the saw-mill timber without his knowledge. The evidence showed that at the time Ashburn had leased this timber for saw-mill purposes it was worth much less than this amount.

All of the evidence of those in position to know shows that this timber was worth much less than this amount at the time it was cut (122, 124, 126, 157, 158). Returned for taxes much lower (120).

It will be noticed that the parties putting the high value on this timber, to-wit. the Messrs. Pidcock, knew little or nothing about the values of timber, and were not competent judges (107), while the witnesses who placed the lower value thereon were well acquainted with the timber and with prices and were experienced timber dealers (122-126). These timbers, every time they have been sold, have brought much less than the amount decreed against this respondent (318, 363). With all of this evidence, we respectfully submit that the amount of the decree is unreasonably large. Ashburn leased this timber to Hightower and Heath at $1.65 per acre

Assignment 16.

The court erred in decreeing one-fourth of the cost of the proceedings against this respondent. There were four lots involved in this litigation, besides an application to restrain the McMullen attachment proceedings. Ashburn claimed less than one-eighth of the property, and an inspection of the record will show that not one-eighth of the evidence referred to him and his property We respectfully submit that in no event should he have been made liable for more than one-eighth of the court cost.

Assignments 20, 26, 28, 29 and 33—Laches.

Judge Pardee, in rendering the opinion of the court in Caulk v Page, 53 Fed., 709; 3 C. C. A. 631, says:

> " We do not care to determine whether the statute of limitation constitutes a complete legal defense to the action, because in equity the complainant's demand is stale, and therefore ought not to be sustained. Staleness of demand need not be pleaded."

Continuing, Judge Pardee, quoting from Badger v. Badger, 2 Wall., 87-94, says:

> "But there is a defense peculiar to courts of equity, founded on lapse of time and the staleness of the claim, where no statute of limitation governs the case. In such cases, courts of equity act upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands, refuse to interfere where there has been gross laches in prosecuting the claim or long acquiescense in the assertion of adverse rights."

Quite a number of cases from the Supreme Court of the United States are cited in support of this doctrine by Judge Pardee, in the latter part of the opinion, each of which we insist is controlling on the case at bar.

An instance of more gross laches than that exhibited by the complainants in this case can hardly be imagined.

Cyrus S. Graves, through whom they claim, died during the Civil Wnr, as set out in the bill, paragraph VI, in 1863. The evidence shows, however, that he really died in 1862 (383). Jennie L. Graves, one of the complainants, applied for letters of administration on his estate in Thomas County, Georgia, in 1862 (383). At that time she recognized that lot 353 did not belong to him (383). Thus she has publisned to the world since 1862, on the public record of Thomas County, Georgia, the county from which Colquitt was formed, and in which this land originally was (Ga, Laws, 1856) (Bill par. 1), that Cyrus S. Graves had no claim to this land at the time of his death. Innocent purchasers have acted on this and are now claiming the land.

Parties in that county, to-wit, A. M. Watson and A. T. MacIntyre, Jr., knowing of this, have bought this title, made deeds to this land (lot 353) to Ashburn (318)

The fact that the administrator didn't claim the property then, is evidence the estate didn't own it.

Caulk v. Pace, 53 Fed., 709; 3 C. C. A., 631, 637.
Lawson v. Powell, 31 Ga., 681.
Floyd v. Wallace, 31 Ga., 688.
Horkan v. Benning, 111 Ga., 126.

In 1889 complainants again declared to the world that they did not claim this lot (353), for at that time Jennie L. Graves conveyed to her daughters, the other two complainants, all the land the then claimed in Colquitt county (339, 310). After this there were never any taxes returned in Colquitt County, in which Jennie L. Graves was interested. None of the complainants ever returned this property for taxatation at all (346). Complainants' agents and representatives (49), as well as their kinsman, E. O. Thompson, recognized that complainants did not claim this lot (155-158). If complainants had have claimed this land during all these years. they certainly would have looked after the taxes on it.

The Supreme Court of Georgia, in the case of Akins et al v. Hill et al., in the 7th Ga., beginning in the middle of page 577, held as follows:

> "Equity will not aid in the enforcement of stale demands. Although Statute of Limitations are obligatory in Equity as well as Law, yet there are cases where that Court will make time a bar, although not strictly pleadable as a limitation. Mere lapse of time is a good defense in Equity; so, also, rights are presumed to exist from lapse of time. Facts will be presumed, even where it is ascertained that do not exist; as a grant, although they are required to be recorded, and the period is within legal memory. Not that the courts will take, as a matter of belief, the fact to be true, as that a grant exists where there is no record of it, but, 'it is supposed,' says Lord Mansfield. 'from a principle, and for

the purpose of quieting possession.' The peace of society requires that there should be limits put to litigation. The justice and sense of civilized communities have ever favored limitation laws. There is no principle of Equity sounder, more conservative and more prolific, in all the fruits of peace, than this: that he who slumbers over his rights, with no impediment to his asserting them, until the evidence upon which a certain claim is founded, may, from lapse of time, be presumed to be lost; until the generation cognizant of the transaction between the parties, has passed away, and until original actors are in their graves, and their affairs are left to representatives—the Law in the exercise of an equitable sovereignty, presumes it to be unjust, that under such circumstances, a complainant should be heard; and in nine cases out of ten, it is unjust in fact, as well as in theory. It is presumed, and the presumption grows out of the principles of human nature, developed in universal experience, that men will use reasonable diligence to get what rightfully belongs to them. Our observation of men teaches that they are more likely hurriedly to assert a false claim, than tardily to assert an equitable one. If the claim be equitable, and an adverse claim is acquiesced in, until the rights of third persons are involved, or, until, from the obliterations of time, the proofs of the adverse claimant are lost, yet that equitable claim ought to yield to that general, social peace upon which its exclusion is founded. Nor ought the demandant to complain, for long years the Courts of Justice were open to him—he might have entered, but would not. He loses his rights, because from stupidity, indifference, convenience, or some other cause, he has failed to assert them. His laches cannot be made available to him, through a visitation of wrong and disaster to hundreds of his fellows. The laws are not for the individual alone—they are also for the safety and peace of the whole State."

The same decision, beginning at the bottom of page 580, holds:

> "In England, twenty years, being the longest term of statutory limitations, has been taken as an equitable term in many cases. This is not, however, a settled term. The discretion is still with the court there, to apply a shorter term."

Also, to the same effect, see Reynolds & Hamby Co. v. Martin, 116 Ga., 502, middle of page

Mr. Justice Field, speaking for a unanimous bench in the case of Fletcher v. Fuller, 120 U. S., 534 (30: 759), said, in reference to laches:

> "Many circumstances may prevent execution of a deed of conveyance, to which the occupant of land is entitled, or may lead to their loss after being executed." * * *
>
> "The death of parties may leave in the hands of executors or heirs, papers constituting muniments of title, of the value of which the latter may have no knowledge, and therefore, for the preservation and record of which may take no action: and thus the documentmay be deposited in places exposed to decay and destruction. Should they be lost, witnesses of their execution and of the contract for their execution may not be readily found." * * *
>
> "Payment of taxes has been admitted in question of adverse possession and may have an important bearing, as it is not usual for one owning reality to neglect paying taxes for a period which would be sufficient to constitute a prescriptive title under the statute of limitations, or for one to pay taxes having no claim or title."

It will be readily seen that the case at bar is stronger in favor of defendant Ashburn and as to lot 353 than was the case just quoted from In addition to the fact that complainants actually advertised to the world, as above set forth, that they did not claim this lot of land, E. O. Thompson, the administrator on the estate of

Abram Graves, who was the father of Cyrus S. Graves, swore that this lot was conveyed to Abram Graves in settlement of a debt that Cyrus S. Graves owed Abram Graves (155-158). The papers introduced by complainants showed also that Cyrus S. Graves was largely indebted to Abram Graves (359). E O. Thompson, a near kinsman of complainants swore that he sold this land to reputable gentlemen, Dr. Bruce and Dr, Bower (157, 387). The land was then worth but very little, and he received for it only a very small price, $75.00 (342, 159). Ever after this. this lot was known as the "Bruce and Bower lot" (105, 111, 113, 114, 115 116), and complainants never claimed it until the filing of this bill (155-160). The conclusion, we insist, is irresistible, that they would not have risked the cost of a suit on this lot, and only included this lot because they had to sue on lot 383.

Complainant Jennie L. Graves, in another suit in the state courts, just prior to filing this suit, made affidavit that she claimed no property in Colquitt County (310, 311). She did not put in any claim to this lot until she found that the deed records in Colquitt County had been burned (157, 264), and that Dr. Bruce and Dr. Bower were dead. It must be remembered that it was during the Civil War, when property was worth very little that E. O. Thompson, administrator of Abram Graves, sold this lot to Bruce & Bower (157-160). It is true that Thompson did not remember the number of the lot he sold, but it was sufficiently identified as being the lot which he did not thereafter return for taxes in behalf of complainants (157-160). Necessary, then, it was lot 353 that he sold. (Exhibit 57, page 346).

Whether Cyrus S. Graves made to Abram Graves a deed conveying lot 353, or whether this was simply a family settlement and no deed was actually made, the courts will not now hear complainants after a lapse of forty (40) years to dispute the same.

Complainants recognize the authority of E. O. Thompson and affirmed his acts and doings as administrator of Abram Graves when they accepted from him property in settlement of their distributive share of

Abram Graves' estate (250-260). It cannot be disputed, we respectfully insist, that they can not have the benefit of the sale and at the same time have the property. The case Leggett v Peterson, 122 Ga., 182, is authority for this propersition.

Had complainants looked after this property (lot 353), returned it for taxes, and let it be generally known that they claimed it, instead of dissavowing any interest in it, these innocent purchasers might never have bought it,. It cannot be disputed that complainants had full knowledge that the land had been sold by E. O. Thompson, who claimed it as administrator of Abram Graves, who was the father of Cyrus S. Graves.

In Berry v. Seawall, 65 Fed., 742; 13 C. C. A., 113, Judge Taft, quoting from Dickerson v. Colgrove, 100 U. S, 578, says that this doctrine as to laches is well setteled, and says further:

> "Vital principle is that he, who by his language or conduct leads another to do what he would not otherwise have done, shall not subject such person to loss or injury by dissapointing the expectation upon which he acted. Such change of position is sternly forbidden. It involves fraud and falsehood, and the law abhors both."

The case of Schlawig v. Purslow, 59 Fed., 848; 8 C. C. A., 319, holds:

> "It is a fundamental rule that courts of equity will not aid a suitor who has for a long time acquiesced in assertion of adverse rights." * * *
>
> "Courts of equity also refuse to interfere though the period of delay is comparatively short where the complainant, being out of possession of the property has waited before bringing the suit until the same has greatly enhanced in value."

The rule is concisely stated by Judge Thayer, in Wetzel v. Minn. Transfer Co., 65 Fed. 23; 12 C.C. A., 493. In the latter part of the opinion he says:

> "The plea of laches does not always depend for

its support upon mere lapse of time, but upon the manifest in equity of permitting the claim to be enforce, in view of some change in the property or in the relation of the parties to the controversy."

The court also in that case holds that the ignorance of complainant is no excuse where she could have ascertained the truth by investigation. The opinion in this same case continues:

"Courts of equity are not influenced solely by lapse of time, but by other considerations as well, which render it equitable to grant the release prayed for. They have a limited discretion in determining upon what circumstances they will afford redress and the hand of the Chancellor will always be stayed when to act would be to do an injustice."

This decision was affirmed in the 169 U. S., 237, (42:730), in which Mr. Justice Brown says:

"All the interest of public order and tranquaility demands that parties shall acquaint themselves with their rights within a reasonable time."

And cites Felix v. Patrick, 145 U. S., 317 (36:719), which holds that twenty-seven years is an unreasonably long time for a person to wait to bring an equitable proceedings to set aside a deed fraudulently obtained.

The Supreme Court of New Hampshire (65 N. H. 37; 23 Am. St. Rep. 20), in the case of Allen v. Colburn, says:

"Laches.—The failure of the heirs-at-law of a decedent to claim their interest in his estate for twenty-three years, during which time the property has been used and controlled by another as his own, precludes them from afterwards asserting their claims thereto."

In the case of Naddo v. Borden, Judge Brewer, speaking for the court (2 C. C. A., 339), lays down the proposition that neither absence from the state nor poverty of complainants will excuse laches.

Judge Sanborne, in the case of Kelly v. Boettcher, 85 Fed., 55; 29 C. C. A., 14, speaking for the Court, siad:

> "Some of the circumstances which will induce a court of equity to apply the doctrine of laches in a shorter time than that fixed by the statute [of limitation] are the destruction of the muniments of of title, death or removal of parties, the number of innocent purchasers who may be affected, radical changes in the condition and value of the property, and the speculative character."

Citing the case of Lemoine v. Dunklin County, 51 Fed., 487; 2 C. C. A., 343, in which it is held that the destruction of public records also constitutes a circumstance supporting the doctrine of laches

In addition to these authorities, see the cases heretofore cited under the head of Laches, on the argument on the demurrer; also see 16 Cyc, 161 et seq.

In the case at bar, practically all of these circumstances exist. The muniments of title have been lost. Doctors Bruce and Bower, the purchasers from E. O. Thompson, administrator, are both dead (368, 356) Cyrus S. Graves is dead (Bill VI). Abram Graves is dead (158). Innocent purchasers have intervened (356, 317. 318), radical changes have taken place in the property (lot 353). It brought $75.00 at the time the administrator of Abram Graves sold it to Dr. Bruce and Dr. Bower (157), and half of it is now, according to the decree of Judge Speer, worth more than twenty times what the whole of it originally sold for at public out-cry—an increase in value of over 4,000 percent. The deed records in Colquitt County have been destroyed (264) by fire.

There is a delay by complainants from 1862, the the date of Cyrus S. Graves' death, to 1899, the filing of this bill—a period of thirty-seven years.

In the cases cited, in which the doctrine of laches is enforced by the courts, the period of dela, were not nearly so long nor were the circumstances as to laches so strong as in the case at bar. We feel confident that no

case will be found in any of the books where any court of last resort have held that a complainant, under such circumstances as surround these complainants, can recover.

Assignments 17, 18, 19 and 20.

These assignments have already been argued herein, and we do not deem it necessary to go over them again.

Assignments 21, 22.

We respectfully submit that the evidence fails to show that the interest of this respondent, so far as he was concerned individually and separately from the other defendants, amounted to Two Thourand ($2,00.00) Dollars. It is nowhere alleged in the pleadings, nor does the evidence warrant the conclucion, that this property was worth Two Thousand ($2,000.00) Dollars.

Assignment 23.

The court erred in entering a decree against this appellant because the evidence failed to show that he had been guilty of any trespass on any of the property. No one testified as to any trespass by this respondent.

Assignment 24.

The court erred in signing and entering the decree against this appellant because it did not appear that complainants' title had ever been established in any court, and it did not appear that complainants had ever been in possession of the land.

The authorities heretofore cited on the demurrer, we respectfully submit, are conclusive on this point.

Assignmeat 25.

Under the statute law of Georgia, Code 4927 (which is copied in full in our brief on the demurrer) and the authorities thereunder cited, complainants could not be maintain this bill on the equity side of the court: they had no perfect title to this lot as contemplated by the

Dixon, Mitchell & Co., v. Monroe 112 Ga., 158.
Wiggings v. Middleton 117 Ga., 162.

There was no allegation of insolvency, and no bond was given by complainants, as required by that statute.

We are frank to admit to the court, however, that we do not believe that the Federal courts, in exercising equity jurisdiction, are governed by statutes. However, under the statutes of Georgia this bill would be wholly deffcient.

Assignment 26.

We respectfully submit that the court erred in entering a decree against this respondent when it appeared to the court that the deed of complainants to this land had in the body of it, opposite this lot, the following words: "Sold to Dr. Bower" (exhibit 3, record 300); this being the deed from Joel S. Graves to Cyrus S. Graves, through whom complainants claimed. The testimony of E. O. Thompson, taken in connection with the conduct of all the complainants, the affidavits made by all the complaints (Exhibit 16, record 310-311), in which they swore that Jennie L. Graves owned no land in Colquitt County, the administration papers of Jennie L. Graves on the estate of Cyrus S. Graves, in which she failed to claim this land (383), all show that the title to this property had passed out of Cyrus S. Graves prior to his death.

Assignment 27.

This appellant insists that the court erred in signing and entering the decree against him because the undisputed evidence shows that this respondent was an innocent purchaser of lot 353 (285-287).

Neither complainants nor their agents ever set up any claim to this land until the filing of this bill. Complainants' agent, E. O. Thompson and A. T. MacIntyre, Sr., and William McMullen, all testified that complainants had no claim to lot 353 and for that reason never returned it for taxes.

Code of Georgia, section 3904, is as follows:

"When one of two innnocent persons must suffer by the act of a third person he who puts it in the power of the third person to inflict the injury must bear the loss."

Code 3939 is as follows:

"Equity gives no relief to one whose long delay renders the ascertainment of the truth difficult, though no legal limitation bars the right."

Brunson v. Sparks, 42 Ga., 35, as follows:

"When the evidence shows that through the act of an agent either of two innocent purchasers must suffer," held that the party putting such agent forward shall be the party on whom the law puts the liability.

If complainants and their agents failed to look after this property, but on the contrary advertised to the world that complainants did not own it, then complainants must suffer the consequences. It is not disputed that this was what happened.

Assignment 28.

Complainants set up no claim to this land until after the destruction of the deed records in Colquitt County and until after the death of Dr. Bower and Dr. Bruce. This of itself would be sufficent to have barred them under Code section 3939, as to laches, just above copied; also see the citations on laches heretofore given in this brief, and especially the convincing opinion of Judge Pardee, in Caulk v. Pace, 53 Fed., 709; 3 C. C. A., 631.

Assignment 29.

The court erred in signing and entering said decree in favor of complainants because the copies from the Thomas County record showed that Jennie L. Graves, one of the complainants, while administratrix on the estate of Cyrus S. Graves in 1862, recognized that this lot 353 did not belong to him (383). Thus she has published to the world since 1862 on the public records of Thomas

County, Georgia, the county from which this (Colquitt County) was fromed, that Cyrns S. Graves did not own this lot of land, and innocent purchasers have acted on this. This is competent evidence. The Supreme Court of this state, in the case of Sample v. Lipscomb, 18 Ga., 687, holds as follows:

1st. "Every fact or circumstance serving to elucidate or throw light upon the issue being tried, constitutes proper evidence in the case.

2nd. "Administrators or executors, plaintiffs in an action, are bound by their admissions in relation to the subject matter of the suit. If they injure the estate by these, they are answerable thereto. But third person must be protected in acting on them, in all suits intituted by the administrator or executor."

Also see—

Lawson v. Powell, 31 Ga., 681.
Floyd v. Wallace, 31 Ga., 688.
Horkan v. Benning, 111 Ga., 126.

In 1889 these complainants again declared to the world that they did not claim lot 353. (See the deed from Jennie L. Graves to her daughters, the other two complainants, record 339, and affidavits of all the complainants made a short while before this case was filed, stating that Jennie L. Graves had by this deed conveyed all her lands to her daughters). (310, 311).

Assignment 30.

We respectfully submit that when the evidence developed the fact that this respondent had no authority over the timber on this land, and only claimed the land or dirt, as distinguished from the timber, on the north half of lot 353, that the court should not have found against him, but should have dismissed the proceedings so far as he was concerned. Under the authorities heretofore cited, it is plain that a bill in equity is not the proper proceedings by which to recover land.

It was not disputed that Ashburn had parted with

the timber prior to the filing of this bill (363). In fact, the bill itself sets this up. (See paragraph XVI of the bill.)

Assignment 31.

We respectfully submit that the court erred in entering a decree against this respondent, the evidence showing that this respondent was an innocent purchaser of the north half of lot 353 (record 285-290) and that he and those under whom he claimed had been in possession of it for more than seven years (274, 106, 111, 113, 114, 115, 126, 127). See Roberson v. Downing Co., 120 Ga., 833; O'Brien v. Fletcher et al., 123 Ga., 427; this last case being a recent decision by the Supreme Court of Georgia. Also see Code, Secs 3586 and 3589, copied heretofore in this brief.

Assignment 32.

Assignment 32 has already been fully covered by the argument. This assignment complains and alleges error because the evidence showed that this was an effort to recover from this respondent, by equitable proceedings, land of which he was in possession, thus depriving him of his constitutional right of trial by jury. We presume no other authorities are needed in support of this assignment.

Assignment 33.

The caurt erred, we respectfully submit, in entering this de ree in faxor of complainants and against this respondent, when it was shown that complainants had never paid any taxes on this land lot 353, (118) Taxes had been paid by this respondent, his agents and those under whom heclaims for a long course of years (346). These taxes would have been a just charge against this land, even if complainants would be entitled to it, and they should have tendered the money for these taxes and been required by the court to account for the same. This was not done. We submit that complainants must do equity if they ask equity.

Assignment 34.

We respectfully submit that in no event could complainants have recovered in this proceeding when the the records of Thomas County showed that there was an administratrix on the estate of Cyrus S. Graves; the administratrix alone could sue. Mason v. Atlanta Fire Co., 70 Ga., 607;

Code 3357, as follows:

> "Upon the appointment of an administrator, the right to the possession of the whole estate is in him, and so long as such administrator continues, the right to recover possession of the estate from a third person is solely in him."

This section also provides that the heirs may sue to recover lands with the consent of the administrator, but nowhere provides that they can recover damages done to the land.

Assignment 35.

This has been fully covered in argument on other assignments, and will not be further argued here.

Assignment 36.

The court erred in entering the decree against this respondent, because the bill set up a case of actual fraud and made that the ground of the prayer for the relief. The evidence fails to develop any fraud on the part of this respondent. His answer (66) and all of the evidence showed there was no fraud, at least so far as Ashburn or his privies are concerned.

On page 599, Vol 13, C. C. A., 66 Fed., 334, the court in the case of Dashell v. Grosvenor, in the latter part of the decision, says:

> "When the bill sets up a case of actual fraud, and makes that the ground of the prayer for relief, the plaintiff is not entitled to a decree by establishing some one or more other facts quite independent of fraud, but which might of themselves create a case

under a totally distinct head of equity from that which would be applicable to the case."

The fact that Ashburn, before purchasing this land, had the titles examined by a reputable lawyer is evidence of his good faith.

United States v. Homestake Min., Co.. 117 Fed., 431; 54 C. C. A., 303.

While we insist that the bill was wholly insufficient, on any theory, yet it could have withstood the demurrer only on the theory of fraud. No fraud was proven against Ashburn. or attempted to be proven. Therefore, if for no other reason, this bill should have failed for the want of evidence as to fraud on Ashburn's part.

Assignment 37.

We respectfully insist that the evidence wholly failed to sustained complainants' bill in any particular.

Assignment 38.

We respectfully submit that the damages awarded by the court were excessive, as has been pointed out herein, in our argument of assignments 14 and 15.

Assignment 39.

We insist that the evidence showing and establishing that respondent Ashburn was the legal and equitable owner of the north half of lot 353, and being in no wise connected with other properties or issues involved, it was error demanding a reversal for the court to enter a decree against him.

In this brief we have cited the court to various parts of the record which as we insist, go to show that Ashburn's title to this lot is good. The courts, especially a court of equity, only requires the party to produce the best evidence that he can under the circumstances. They put a penalty under the doctrine of laches on a complainant who delays until the evidence is destroyed before bringing suit. If complainants had have acted promptly in the matter, had have returned this lot for taxes, had have administered on it as the property of

Cyrus S. Graves in 1862, had not waited until Dr. Bruce and Dr. Bower died and until the records of Colquitt County had been destroyed by fire. Ashburn could have, without reasonable doubt, produced absolute evidence showing paper title. As it is, he shows a precriptive title to the land, besides showing by E O. Thomoson and other complainants' agents, that this lot did not belong to Cyrus S. Graves at the time of his death.

We respectfully submit that this evidence and these circumstances demand a finding that complainants have no interest at all in lot No 353, and that Ashburn's title to the north half of lot 353 is good against complainants.

IN CONCLUSION.

We submit that if complainants had any equitable remedy at all against any of the respondents, it was to have filed separate ejectment suits for the lands, and then have brought injunction proceedings to stay waste until a jury trial could be had in the ejectment causes. This would have given complainants all they were entitled to, and at the same time have given each of the respondents a jury trial. Ashburn would then have had his rights passed on free from the confusion necessarily incident to the joining of all these issues and defendants in one action.

Complainants have no right to confuse the issues in the manner in which they have.

Respectfully submitted,

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ROBT. L. SHIPP,

Solicitors for respondent Anna P. Ashburn executrix of W. W. Ashburn deceased.

Moultrie, Ga.

of law rather than a possible fact, and can reasonably be assumed to follow the title; and, in this case, *held* that a suit in equity could be maintained to remove cloud on title and cancel a fraudulent deed of timber lands in Georgia notwithstanding there was no allegation of possession.

A suit in equity may be maintained to cancel a deed improperly given where the invalidity does not appear on its face, and under which by the state law, as in Georgia, possession might give a title.

The fact that the defendant has, during the pendency of an equity action to set aside a deed, continued to waste the property does not destroy the jurisdiction of the court; the bill may be retained and damages assessed.

The objection of multifariousness is one of inconvenience, and, after trial, where the objection was not sustained by the lower court and defendants did not stand upon their demurrer setting it up, it will not prevail in this court in a case where the bill charged a conspiracy between several trespassers whose trespasses extended over contiguous lots treated as one.

THE facts are stated in the opinion.

Mr. Marion Erwin, with whom *Mr. William J. Wallace* was on the brief, for petitioners.

Mr. Alfred R. Kline and *Mr. Robert L. Shipp* for respondents.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill in equity brought by the petitioners against H. T. Crawford, W. W. Ashburn, now represented by his executrix, his lessees, and, originally, against other defendants who have been disposed of and are not before us. The petitioners show title in themselves, derived from the State, to four nearly square lots of land, of about 490 acres each, contiguous to each other and making one large square in the Eighth District of Colquitt County, Georgia. The right hand upper square upon the map is numbered 353, the left hand upper square, 354, the left hand lower, 383, and the right hand lower, 384. This land had upon it pine woods valuable

for timber and turpentine. The bill alleges that the petitioners being residents of New York employed a firm of lawyers to look after the same; that by a breach of trust and without title or authority a deed was made on behalf of the firm purporting to convey the north half of lot 353 to the defendant Ashburn; that he had notice of the want of title, but nevertheless let the timber privileges to another defendant, and that the latter was about to cut the timber and had already boxed the trees and taken turpentine from other portions of the same lot. In pursuance of the same general fraudulent plan another voidable or void conveyance was made to Crawford of lot 383, and thereafter Crawford began to box the trees on that lot and to carry away the turpentine. Further particulars are not necessary here. The bill sought an injunction against boxing the trees, carrying away turpentine, or cutting timber, and a cancellation of the fraudulent deeds.

The Circuit Court dismissed the bill against Crawford, on the ground that the plaintiffs had a complete remedy at law, and it did not pass on the title to lot 383 and the south half of 353. It declared the plaintiffs' title to lots 354, 384 and the north half of 353, and granted the relief prayed in respect of them against Ashburn and others. There were cross appeals, and the Circuit Court of Appeals dismissed the bill, concurring with the Circuit Court as to Crawford, and holding, with regard to Ashburn, that so far as the cloud upon the title was concerned it did not appear sufficiently, from the bill, that the plaintiffs were in possession, and if they were, the deed to Ashburn did not constitute a cloud. As to the cutting of trees, it was held that the remedy at law was complete.

We shall deal first with the last ground of decision, which involves a difference of opinion between different Circuit Courts of Appeals. It is assumed, as was found by the Circuit Court, that the plaintiffs' title was made out and that the defendant is or may be responsible for the wrong. If the

defendant is responsible we are of opinion that an injunction ought to issue. The industry concerned is so important to the State of Georgia and the remedy in damages is of such doubtful adequacy that equity properly may intervene, although in different circumstances an injunction against cutting ordinary timber might be denied. The policy of the State is indicated by § 4927 of the Civil Code, 1895, continuing earlier acts. "In all applications . . . to enjoin the cutting of timber or boxing or otherwise working the same for turpentine purposes, it shall not be necessary to aver or prove insolvency, or that the damages will be irreparable." Although in form addressed to procedure this implies a principle grounded upon a view of public policy. See *Camp* v. *Dixon*, 112 Georgia, 872. *Gray Lumber Co.* v. *Gaskin*, 122 Georgia, 342. The same result has been reached apart from statute by the Circuit Court of Appeals for the Sixth Circuit and in other cases. *Peck* v. *Ayres & Lord Tie Co.*, 116 Fed. Rep. 273. *United States* v. *Guglard*, 79 Fed. Rep. 21. *King* v. *Stuart*, 84 Fed. Rep. 546. Whatever the ultimate disposition of the case a final decree should not be entered until the evidence has been considered in the light of the rule that we lay down. We leave the further consideration to the court below.

As the case is before us, it is proper to add that we perceive no sufficient reason in the grounds stated for denying a cancellation of the deed to Ashburn. The first of these grounds is that the plaintiffs do not allege that they are in possession of the land concerned. We infer that the premises, or the greater part of them, are woodland, not enclosed by fences, but in their original natural condition. If so, then possession is a fiction of law rather than a possible fact, and it would be reasonable to assume that possession remains with the title. *Green* v. *Liter*, 8 Cranch, 229. Georgia Code, § 3878. We may say more broadly, and without qualifying *Lawson* v. *United States Mining Co.*, 207 U. S. 1, 9, that in view of the statute, the relief, in case of such lands, should not be made to depend upon shadowy distinctions, according to the

greater or less extent of the trespasses committed. See *Holland* v. *Challen*, 110 U. S. 15. *Simmons Creek Coal Co.* v. *Doran*, 142 U. S. 417, 449. It has been intimated by the Georgia court that relief would be granted, irrespective of possession. *Pierce* v. *Middle Georgia Land & Lumber Co.*, 131 Georgia, 99. *Griffin* v. *Sketoe*, 30 Georgia, 300. See also *Sharon* v. *Tucker*, 144 U. S. 533, 536, 543. The other ground mentioned is that if Ashburn should sue, his deed would not enable him to recover. But in any case proper for relief the deed does not convey a good title. It is enough that the invalidity does not appear upon its face, but rests partly on matter *in pais*, and that possession under it for seven years might give a title by the Georgia Code, § 3589, embodying earlier statutes.

The fact that Crawford during the pendency of the suit had cut the trees on a portion of the land did not destroy the jurisdiction of the court. If that or the other grounds that we have mentioned were the reasons for dismissing the bill as to him, it should be retained and damages assessed. *Milkman* v. *Ordway*, 106 Massachusetts, 232, 253. If different facts from those that we have discussed were found to exist it does not appear.

It is urged that the bill is multifarious. But it charges a conspiracy between the several trespassers, and trespasses extending over the greater part of the four contiguous lots treated as one. The objection of multifariousness is an objection of inconvenience. The defendants did not stand upon their demurrers setting it up. There has been a trial after long delay. In view of the evidence and the fact that the objection did not prevail with the lower courts, we are of opinion that it should not prevail now. While the decree must be reversed, our decision is without prejudice to any finding upon the facts consistent with the rules that we have laid down.

Decree reversed and case remitted to the Circuit Court for further proceedings.